IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

HOWARD A. ENGLE, M.D., ET AL,
Plaintiffs,
VS.
RJ REYNOLDS TOBACCO COMPANY, ET AL
Defendants.

) CASE NO. 94-08273 CA 20

DEPOSITION OF ERIC SOLBERG

VOLUME III

January 7, 1999 Houston, Texas

Property of: Ness, Motley
Main PI File Room
Charleston, SC

http://legacy.library.ucsf.edu/tid/nur07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

INDEX

TESTIMONY OF: ERIC SOLBERG - VOLUME III

EXAMINATION BY: PAGE

By Mr. McConnell 6
By Mr. Hranitzky 222
By Mr. McConnell 262
By Mr. Hranitzky 323

EXHIBIT INDEX

PAGE

Exhibits Nos. 1 and 2 262

http://legacy.library.ucsf.edu/tid/nur07a00/pdf
Support provided by www.industrydocuments.ucsf.edu/docs/fsjl0001

APPEARANCES:

FOR THE PLAINTIFF:

Stanley M. Rosenblatt, P.A.
12th Floor - Concord Building
66 West Flagler Street
Miami, FL 33130
By: Mr. John Hoag

FOR THE DEFENDANT PHILIP MORRIS INCORPORATED:

Dechert Price & Rhoads
4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, PA 19103
By: Mr. Stephen J. McConnell

FOR THE DEFENDANT COUNCIL FOR TOBACCO RESEARCH - U.S.A., INC.:

DebeJoise & Plimpton
875 Third Avenue
New York, New York 10011
By: Mr. Dennis Hranitzky

* * * * * * * * *

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Document hosted at www.industrydocuments.ucsf.edu/docs/fsjl0001

The oral deposition of ERIC SOLBERG was taken on January 9, 1999, in the offices of Shook, Hardy & Bacon, L.L.P., 600 Travis, Suite 1600, Houston, Texas, beginning at 9:45 a.m., before Karen Romeo Rothman, Certified Shorthand Reporter in the State of Texas, pursuant to the Florida Rules of Civil Procedure and under the following agreement of counsel for the respective parties that:

The deposition may be signed by the witness before any Notary Public or officer authorized to administer oaths.

* * * * * * * * * * *

http://legacy.library.ucsf.edu/tid/sur07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/fsjl0001

MR. HOAG: For the record, I just have a brief statement. I explained to Mr. McConnell I was going to discuss this very quickly. During Eric's second deposition, he was asked questions related to the AMA, the American Medical Association, documents were provided that were related to the AMA and his knowledge of the AMA, and the reason I'm saying this now is because during arguments before Judge Kaye regarding Eric's testimony, Eric Solberg's testimony, I believe Mr. Moss incorrectly stated that issues related to the AMA were never mentioned at all during any of his depositions, but, in fact, they were and documents were provided that were related to that issue.

MR. McCONNELL: Are we ready to proceed?

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/fsjl0001

ERIC SOLBERG,

having been duly sworn, testified as follows:

EXAMINATION BY MR. McCONNELL:

Q Good morning, Mr. Solberg, yet again.

A Good morning.

Q How are you?

A Good.

Q Mr. Solberg, do you consider yourself a historian?

A In what regard?

Q In any regard.

A Any regard on the face of this earth?

Q Correct.

A Yeah, I consider myself a historian on the tobacco issue.

Q Do you consider yourself a historian on any other issue?

A Well, it's a pretty broad issue certainly. I mean, I could break it down in many, many areas of the tobacco issue.

Q No, no. I mean, are you a historian on any issue other than the tobacco issue?

MR. HOAG: When he's saying tobacco, of course, he's saying to you

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

that is very broad, and he could break it down and explain what he means by that, but are you just kind of assuming it's broad?

MR. McCONNELL: Correct. We all agree it's broad.

MR. HOAG: Okay.

A No, I'm not.

Q (By Mr. McConnell) Do you have any degree in history?

A No formal degree.

Q Do you have an informal degree in history?

A I don't know if there is such a thing, I guess, as an informal degree.

Q I don't either, that's why I was asking you. Have you ever been trained in the historical method?

A I think there's more than one method in history. So. . .

Q Can you describe the different methods in history?

A In terms of studying?

Q The schools of historical method, if that's what you're talking about.

MR. HOAG: I'm going to object to

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/fsjl0001

the form of the question.
A I'd ask what you're talking about. If you could explain to me what you're talking about, I could better answer the question.
MR. HOAG: Let me finish my objection. I'm objecting to the question that Mr. Solberg has just asked additional questions about in that the question itself is overly broad and vague.
Q (By Mr. McConnell) Are you familiar with the term historical method?
A I'm familiar with the term.
Q What does it mean to you?
A I don't know that I could define it in terms of an academic response from a historical perspective.
Q Have you ever taken courses to describe what the historical method is?
A Let me just state, you know, that I know where you're going with the questioning, and I've already stated that I don't have a degree in history. I think historians come from many backgrounds and many different degrees, believe it or not, including

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Support provided by the UCSF Library www.industrydocuments.ucsf.edu/docs/fsjl0001

journalists and so on and so forth. So, I might be able to help you skip some of the questions by just stating again that I don't have any formal degree in history.

Q I've asked you a different question, which is do you know what the term historical method means?

A No.

Q What are the leading textbooks on the history of medicine?

A Well, you'd have to define the textbook on the history of medicine. I think John McGovern, even his own biography, if you will, is a very good book on the history of medicine. He was a student of Osler's, and Osler himself has written quite a bit about the history of medicine. In fact, John McGovern I think is a very excellent example. He has a collection here in the Texas Medical Association library on that very subject which I have examined.

Q What's the name of Mr. McGovern's book?

A I don't recall off the top of my head.

Q Can you name any --

A I can tell you that I've examined his

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

collection at the Texas Medical Association library that is in the Texas Medical Center here in Houston, and the collection was donated by Dr. John McGovern to the library several years ago, and we have actually -- I have worked with that library on developing exhibits.

Q Can you --

A That include historical aspects of medicine. Sorry.

Q Don't be sorry. Answer the question as fully as you want, I just don't want to interrupt you.

Can you name any history of medicine in America that you consider to be authoritative?

A History of medicine in America?

Q Correct.

A Are you talking about a book or a journal or an article?

Q Let's start with a book.

A There are several. Again, I'll say there are several books actually. There's a book that I actually contributed to a chapter that deals with some aspects of history and

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

medicine. The name of that book is -- let me think -- The Doctor and Patient in Society. That's edited by actually two individuals. A Dr. Warren Holleman is the one that I recall.

Q Can you name any other books that you believe are authoritative on the issue of the history of medicine in the United States?

A Not off the top of my head at this moment, no.

Q And you had also mentioned other categories, journals, articles. Are there any journals or articles on the history of medicine in the United States --

A Sure.

Q -- that you believe are authoritative?

A Sure. JAMA has done several theme issues on the history of medicine. In fact, I have copies of those in my office, because I've referred to them in the past.

Q Any --

A Those are -- I'm sorry. Those are theme issues that focus almost entirely on the entire issue, with the exception of a few

http://legacy.library.ucsf.edu/tid/xur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

articles or editorials or letters to the editor, on the history of medicine.

Q Are there any other journals or articles that you believe are authoritative on the issue of the history of medicine?

A There are other state journals, medical society journals that have done the same thing, focused on the history of medicine.

Q Are there any textbooks on the history of medicine in the United States that you believe are authoritative?

A I'm sure that there are. I can't think of any off the top of my head at the moment.

Q Is there an authoritative history of the American Medical Association?

A That's a very good question. You'd have to ask Frank Campion, who was the author of a book that dealt with the entire history of the AMA. Unfortunately for Mr. Frank Campion, he sort of revised history as he wrote that book. In fact, he did not include several major important factors in the role of the American Medical Association in public health issues.

Q Let me see if I understand your answer. Are

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

you then saying that Mr. Campion's history of the AMA is not authoritative?

A I think that what he wrote is a fair insider's perspective of the history of the AMA on a variety of issues; however, several things were left out of his book. I'm not saying that what he wrote was not authoritative. I'm saying that what he neglected to put in the book doesn't include the entire picture.

Q Do you believe that you've been undertaking an ongoing history of the American Medical Association?

A Can I go back and finish answering?

Q Of course.

A There is another book written more recently by another employee of the AMA whose name escapes me at this moment, but I have a copy of his book. In fact, I met with him, and he interviewed me for his book on the AMA. I don't remember his name at the moment.

Q How about the name of the book?

A I think it was something like Vital Signs, was the beginning of the title. It had a longer title than that.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Browse this document online at www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Let me go back to the question I was trying to ask now. Do you believe that you have been undertaking an ongoing history of the American Medical Association?
A Certain aspects of the American Medical Association, yes.
Q Good. And what aspects are you talking about?
A Focusing my attention on their involvement in the tobacco issue.
Q What secondary sources have you relied upon in undertaking an ongoing history?
A Let me go back one more time, I'm sorry. There's a third book on the history of the American Medical Association that was written by Howard Wolinsky and Tom Brune. I actually have that book with me. I could give you the tile, if you'd let me grab it.
Q That's fine.
MR. HOAG: Just for the record, while we're taking this brief respite, he also brought with him -- and I explained this off the record to defense counsel -- some additional documents which include articles,

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

advertisements that were tobacco advertisements in the JAMA journal.

MR. McCONNELL: Are they in the three boxes that are behind Mr. Solberg?

A They're in two of the three boxes that are behind me.

Q (By Mr. McConnell) What's in the third box?

A Health claims in cigarette advertising.

Q Is that something you're relying upon for your testimony in this case also?

A I think most of those have already been copied, because I think they're sitting right here.

Q We don't need to look at them if we've already got them.

A I believe so.

MR. McCONNELL: Do you think that's right, Mr. Hoag?

MR. HOAG: Well --

A There may have been some in there that were not copied in that packet. I didn't go through and double-check.

Q (By Mr. McConnell) We'll take a look at that during the break then. But you were

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/fsjl0001

getting that book?
A The Serpent on the Staff: The Unhealthy Politics of the American Medical Association.
Q Can I take a look at that?
A For your information, I participated as a researcher in the book. I'm acknowledged in the beginning. I only had involvement in one chapter, that was Chapter 7 that deals with the AMA's involvement in the tobacco issue.
Q You say you've been undertaking a history of the AMA, at least certain aspects relating to tobacco. My question is: What secondary sources have you relied upon in undertaking that history? And, first, have you relied upon the three books that you've already named: Campion's book, the book Vital Signs, and the Wolinsky and Brune books? Have you relied upon those books?
A Technically, Campion's book doesn't cover the tobacco issue at all.
Q So, you haven't relied upon that?
A I've relied on it only in that it was excluded from the history of the AMA that

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Frank Campion wrote.
Q What have you relied upon the Campion book for?
A That he excluded mentioning anything about the involvement on the tobacco issue.
Q Okay. Have you relied upon the Vital Signs book?
A A few paragraphs out of the book.
Q Relating to what?
A Maybe a few pages at the most. The tobacco issue.
Q Relating to what on the tobacco issue, if you can recall?
A The AMA's involvement in the tobacco issue.
Q What did the book Vital Signs say on that subject?
A For the most part, that the AMA was a latecomer to dealing with the problems associated with smoking and tobacco use.
Q Did the book Vital Signs indicate that the AMA was in any way dishonest or corrupt with respect to the tobacco issue?
A No, I don't think it would. He was employed by the AMA to write the book.
Q Did you rely upon the Wolinsky and Brune

http://legacy.library.ucsf.edu/tid/xur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

book in undertaking your history of the AMA?
A Technically, no, because I supplied them with the information they needed to write their chapter. So, to answer your question, did I rely on the book, not -- not really, because I already knew the information, the majority of the information that was published in that chapter as it appeared on bookshelves.
Q Are there any other secondary sources that you have relied upon in undertaking your history of the AMA with respect to the tobacco issue?
A Can you explain secondary sources, or define that?
Q In other words, I'm excluding documents that were written by the participants.
A Right.
Q I'm certainly excluding advertisements. I'm talking about books or articles that people wrote about the issue. Are there any that you've relied upon?
A What about correspondence?
Q Let's exclude correspondence for the moment, so just secondary sources.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

MR. HOAG: In your definition of secondary sources, are you including interviews he may have had with people, or is that out of your definition?

MR. McCONNELL: We'll exclude that for now. That's a nice thing to mention for me, but --

Q (By Mr. McConnell) So, we'll exclude interviews. We're just talking about secondary sources, books or articles written by somebody else about the AMA.

A Yes. Several issues of JAMA, too many to try to recall at the moment what issues they actually were, but I would say easily 50, 60 issues of JAMA.

Q For what time period?

A Starting in the 1930s through, well, present day.

Q Are there any other secondary sources that you've relied upon for this history of the AMA and the tobacco issue?

A Other medical journals.

Q Such as what?

A The Lancet, British medical journal, New England Journal of Medicine, New York State

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Journal of Medicine, Journal of the Texas Medical Association. Actually, there's so many state journals that I've relied upon, I don't think I could name all of them. I would say probably ten or twelve. As you know, many of those journals fall under -- I think it's about 33 of the state journals fall under a group that is part of the AMA system.

Q Have you relied upon any state medical journals from the state of Florida?

A Yes, I have.

Q Which ones?

A I can't tell you what issues they were.

Q I'm just asking for the name of the journal, as opposed to the specific issue.

A There's only one state -- there's only one state medical journal in the state of Florida.

Q What's it called?

A I don't recall off the top of my head. I believe it's the medical journal of -- it's the Journal of the Florida Medical Association, I believe.

Q Aside from medical journals, are there any

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Browse this item online at www.industrydocuments.ucsf.edu/docs/fsjl0001

other secondary sources that you've relied upon?

A Actually, I take that back. I don't know that it's technically a journal in Florida. It may be, it may be -- it's a publication from the state medical society, but I don't know that it technically qualifies itself as a journal. It may be a newsletter.

Q All right.

A It's a publication. It's an official publication.

Q All right. Now, besides medical journals, are there any secondary sources you've relied upon?

A Yes, there's been other books that I've relied upon.

Q What books?

A Oh, God. I have a reference list of some of these. Could I look at that?

Q Sure, that would be great.

A (Witness referring to documents.)

MR. McCONNELL: Can we go off the record for a second?

(There was discussion off the record and a short break was taken.)

http://legacy.library.ucsf.edu/tid/nur07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Q What have you got, Mr. Solberg?
A Well, one moment. (Referring to document.) Indiana Medicine, that's another journal. In fact, there was an article in that journal in 1995 or 1996 that dealt with the history of the AMA on tobacco issues, "Smokescreen: Tobacco and the Public Welfare," by Maureen Neuberger. "Tobacco and Health," published by the American Medical Association Education and Research Foundation.
Q Is that dated 1978?
A Well -- yes. I'm sorry, yeah, it is.
A "A Sacred Trust," only portions of which I've read, but written by -- I believe it's Robert Harris. I don't remember his first name, R. Harris.
Q You've been reading from a document. What document are you reading from?
A It's just a reference list of various articles and books that I have relied upon in my looking at the history of the AMA on the tobacco issue.
MR. McCONNELL: Can we get a copy of that?

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

MR. HOAG: Sure.
MR. McCONNELL: Will you just have them make a couple of copies of that?
MR. HOAG: This can be on the record, just a question of clarification. In your definition of secondary sources, you're also including newspaper and magazine articles, just regular newspapers?
MR. McCONNELL: I actually was including that.
THE WITNESS: That was my next question.
Q (By Mr. McConnell) well, there's your answer, so you tell me what secondary sources you've relied upon that fit into that category.
A Wall Street Journal, New York Times, Advertising Age, Chicago Sun Times, the Miami Herald.
Q What specific --
MR. HOAG: Were you finished?
THE WITNESS: Well, there's a number of them. In fact, he just took a list of them that I've relied upon.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Q (By Mr. McConnell) We'll get to that.
A Okay.
Q What specifically from the Miami Herald have you relied upon, if you can recall?
A There's been several articles in the Miami Herald that deal with -- that have dealt with both the local medical society in Dade County dealing with tobacco issues, the state medical society in Florida dealing with tobacco issues, and the AMA's involvement in tobacco issues.
Q You stated before that the conclusion of one of the books that you relied upon was that the AMA was something of a latecomer to the issue of tobacco and health, is that right?
A That's correct.
Q That's an opinion you share, is that right?
A I share that opinion that was published in that book?
Q Yes.
A How would you define tobacco issue?
Q However you're defining it.
A Well, for the purposes of my -- of my historical research?
Q Correct.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

A No, they weren't a latecomer at all, then. They were some of the first people to be involved in the tobacco issue.
Q You mentioned the Wall Street Journal among the secondary sources that you've relied upon, and --
A Let me just clarify that, because --
Q Okay.
A Sorry. In Vital Signs, the book, the author attempts to write about the current environment of tobacco issues, which would include tobacco control and antismoking campaigns. So, my definition of the American Medical Association's involvement in the tobacco industry is not that narrowly limited. It includes all involvement on the tobacco issue, whether it be an article published in JAMA to a cigarette ad that might have appeared in one of their journals.
Q You mentioned the Wall Street Journal, and I happened to come across this line from today's Wall Street Journal. It's an article about impeachment, President Clinton and President Andrew Johnson, but the line

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

is: "Historians say their job is to interpret individuals according to the customs and values of the eras in which the individuals lived." Do you agree or disagree with that statement?

MR. HOAG: I'm going to object to the form of the question, but go ahead.

A Can that be read back to me again?

Q (By Mr. McConnell) I'll read it to you, and I'll give it to you. "Historians say their job is to interpret individuals according to the customs and values of the eras in which the individuals lived." It's at the top there. (Handing.)

A I think that that is one viewpoint within the academic field of history. I don't think that's the only viewpoint. I think that when you're dealing with history, oftentimes it's very difficult to actually place a great deal of what you're learning about individuals in the very context in which they were living. It's not impossible, but it's oftentimes very difficult to do so. I don't know that value systems are recorded in history very

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

accurately, and I think that there are, in many cases, arguments made that one historian's application of a value system to a time period or era is very different than another historian's. And we see that all the time in debates about what history is, what history means, even some of the facts about the history, whether or not they were important or not.

Q Are you familiar with the historical notion of present-mindedness?

A Yes, I've heard of that.

Q And what does that mean?

A It means thinking about things today, at the present.

Q Does it mean, in the context of historical research, the application of current values in interpreting events that happened in the past?

A Yeah, basically that's what it means.

Q And to your mind, is that present-mindedness something to be avoided or used in the historical method?

MR. HOAG: I'm going to object to the form of the question. It's overly

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

broad and vague, especially "to your mind."

Q (By Mr. McConnell) In your opinion as an expert?

MR. HOAG: I'm still going to object to the question because it's overly broad and vague.

A I don't remember what the question was.

Q (By Mr. McConnell) In your opinion as an expert, is present-mindedness something to be avoided or to be employed in using the historical method?

MR. HOAG: I object to the form of the question. It's overly broad and vague.

A Since I already told you that I am not familiar with the definition of historical method, I don't know that I can answer that question accurately. I think that there is a great deal of discussion among historians on many issues and accusations made toward historians that have used, as you said, the words present-mindedness in their analysis of history, and they have been criticized by the historians and agreed with by some

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

others.
Q (By Mr. McConnell) In undertaking your history of the AMA with respect to tobacco issues, is present-mindedness something that you've attempted to avoid?
A Yes, actually, it is.
Q Have you ever been a member of the AMA?
A No. I'm not a physician. I know that they do have, or at one time they did have a lay membership. I don't know if it's there. You know, they have different sections within the AMA. They have a resident physician section, a medical student section. I don't know if they have a patient section or not, I've never heard of anything like that. But at one time point in time they did have sort of a consumer section. I don't know if that's still there or not.
Q You've never been a member of the AMA, correct?
A No.
Q Have you ever attended an AMA meeting?
A Yes, I have.
Q When did you do that?

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Library http://www.industrydocuments.ucsf.edu/docs/fsjl0001

A I've attended several AMA meetings, starting in -- talking about strictly AMA meetings, or also meetings sponsored by the AMA?
Q Let's start with strictly AMA meetings.
A The first meeting would have been in January of 1993. Well, I'd have to look at my calendar. I've been to about four AMA meetings.
Q On what topics?
A Two of them on tobacco. Those were hosted by the AMA but cosponsored by other agencies. I've been to one very general -- it was like "Medicine in the 21st Century." It was a meeting that covered many areas of health care and medicine, but tobacco was also included in that conference. Again, I'd have to check to see exactly which meetings they were, what dates they were and what their agenda was.
Q Were any of those meetings relevant to your history of the AMA-ERF?
A Yes.
Q In what way?
A Well, discussing my own investigation of the relationship between the AMA-ERF with staff

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

and delegates to the AMA.
Q Did you make any presentations at any of these AMA meetings?
A Yes, I did.
Q What presentations did you make?
A The one in January, 1993, I made a presentation on tobacco advertising.
Q What is --
A Actually --
Q I'm sorry, go on.
A Actually, it was a history of tobacco advertising through some of the current advertising strategies in other countries.
Q Was that presentation written up?
A Yes, it was.
Q Is that presentation listed in your C.V.?
A No, it's not. Actually, I don't know. It may be. I'd have to take a look.
Q Let me show it to you. (Handing.)
A It's under "Invited Lectures." "Tobacco Marketing and Promotion: An International Perspective" (Workshop) - "Tobacco Use: An American Crisis," published by the American Medical Association, Washington, D.C., January 9th, 1993.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Can I see that for a minute?
A (Handing.) My memory's better than I thought.
Q And you were discussing cigarette ads as part of that talk, is that right?
A Yes. I was talking about the history of cigarette advertising and current -- up through current trends in advertising, including international trends.
Q And for what time period were you addressing cigarette ads? Well, you already said up to the current time, so how far back did you go in this talk?
A Early 1900s, maybe late 1800s. Part of the presentation included tobacco trading cards, which are little cards that they used to put in the packages of cigarettes to keep the pack stiff, but also to promote their own brands with various themes on trading cards. And so I probably talked about some advertising in the 1800, late 1800s.
Q Who did you give this talk to?
A It was a workshop. Are you asking me who attended the workshop? I mean, there were attendees of the meeting. I couldn't tell

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

you exactly who was there.
Q The members of the AMA?
A Some were members of the AMA, yes.
Q Some were not?
A And some were not, that's correct.
Q Who were the non-members of the AMA, if you know?
A I don't recall the names.
Q Was it open to the public?
A It was cosponsored by the Centers for Disease Control, so I would have to say yes, it was open to the public. I mean, I believe the attendees were actually invited participants, but I don't think you can shut the public out of a government cosponsored meeting.
Q Are you aware whether or not any of the other Plaintiffs' experts in the Engle case are members of the AMA?
A I don't know if they are or not.
Q Is Dr. Blum a member of the AMA?
A No, he's not.
Q Do you know whether or not Ronald Davis is a member of the AMA?
A Is he an expert witness in the Engle case?

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Q I will represent to you that he has already testified as an expert.
A Yes, I know that he's a member of AMA.
Q In fact, he's a senior member of the AMA, right?
A He is running for the Board of Trustees of the AMA.
Q And he's head of the Council on Scientific Affairs of the AMA, is that right?
A That may be his latest position, yes. I know that he has also represented -- as a delegate, he represents the -- I don't know if it's society or association of preventive medicine. That was one of his roles at one time. I don't know if that still is or not. I don't follow his C.V.
Q Do you know whether Dr. David Burns is a member of the AMA?
A I do not know if he is or not.
Q Do you know whether Dr. Cummings is a member of the AMA?
A I do not know if Dr. Cummings is a member of the AMA.
Q Do do you know whether Neal Benowitz, Dr. Neal Benowitz is a member of the AMA?

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Browse this at http://www.industrydocuments.ucsf.edu/docs/fsjl0001

A I don't know if he has membership, no.
Q We were talking before about what you were relying upon for undertaking your history of the AMA and tobacco issues, and we had gotten through secondary sources, is that right?
A Correct.
Q And Mr. Hoag very helpfully suggested some other categories, so let me ask about that. Interviews, have you interviewed people and such interviews have been helpful to you in undertaking your AMA research?
A Yes.
Q All right. Who have you interviewed?
A And let me define interview. Those are conversations that I've had with people where I have tried to take notes and/or tape record some of them, not all of them.
Dr. Ron Davis -- and I won't remember all of these. There's a lot of people on the list. Dr. Tom Houston, Dr. Alan Blum, Dr. Roy Ritts, Dr. Leonard Schumann, Dr. Walter Burdette, Dr. Jesse Steinfeld, Dr. Rick Richards, Dr. Paul Fischer. Those are the ones I can remember at the moment.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf
Support https://www.industrydocuments.ucsf.edu/docs/fsjl0001

I mean, I'm sure I'm leaving several out.
Q For which of those interviews do you currently have audio tapes?
A I don't know. I'd have to check.
Q Now, you've already mentioned that Dr. Alan Blum is not a member of the AMA. What about the other people that you've mentioned? You mentioned nine people. Are they members of the AMA or not?
A I have no idea. Some are. I think Dr. Tom Houston and Dr. Ron Davis are. The rest of them, I don't know.
Q You don't know if Jesse Steinfeld is a member of the AMA?
A I have no idea.
Q Have you published anything in a peer review journal regarding the history of the AMA?
A Yes.
Q What have you published? I've got your C.V., if that would help.
A Yeah.
Q (Handing.)
A "Real Progress versus Public Relations in Tobacco Control." That was published in Seminars in Respiratory and Critical Care

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Medicine, July, 1996. "The Role of the Family Physician in Ending the Tobacco Pandemic," certain portions of that article covered the history of the AMA. I should say "The Role of the Physician," the Journal of Family Practice, June, 1992.

There was one I don't see on my C.V. even that was published in Tobacco Control that would have been about 1992 that dealt with a number of resolutions that had been introduced into the American Medical Association. I don't even see it on my own C.V., so I don't think I've even updated this probably for a couple of years, at least.

Q The C.V. that I've handed you, is that the current C.V. that you have?

A It's the current one that I have.

Q Just needs a little updating?

A Yes.

Q To borrow a phrase from Mr. Rosenblatt, what is the thrust of your article on real progress versus public relations with respect to the AMA?

A I'd have to take a look at the publication

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

again. I don't remember exactly what was written. That was in -- that was probably two or three years ago that that was written.

Q Same question with respect to the even older article of the role of the family physician in ending the tobacco pandemic.

A That looked at the historical role of physicians and organized medicine in their involvement in tobacco issues.

Q Did either that article or the real progress versus public relations article talk about the AMA-ERF?

A I don't recall off the top of my head. They may have.

Q Do you know offhand whether you've ever published anything in a peer review journal regarding the AMA-ERF?

A Specifically including that only, that topic only?

Q Not that only, but including that, including that specifically.

A No. The only thing that I have done that would be in published form would have been to provide documentation and my own research

http://legacy.library.ucsf.edu/tid/xur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

to Howard Wolinsky for Chapter 7 of his book.

Q All right. Now, let me remove the restriction of peer review. Have you published anything specifically regarding the AMA-ERF, even if it pertained to something else in addition to AMA-ERF? Have you published anything that included a discussion of the AMA-ERF?

A No. I have written -- it's not published, it's a work in progress.

Q What's that?

A You want the working title?

Q Sure.

A I don't like the working title.

Q I won't hold you to it.

A Because I thought of it two or three years ago. The Conspiracy Theory in Tobacco Litigation.

Q Why don't you like that title?

A I don't know. I just don't like it.

Q It's going to sell a lot of books.

A I'm sick of -- well, I hope it does, actually, one day. I'm sick of tobacco litigation.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Q What is the conspiracy theory in tobacco litigation?
A Talking about the theory that I'm writing about?
Q Correct.
A Well, the theory, there's a general, I think, assumed theory among lawyers, both plaintiff and defense lawyers, that tobacco companies worked together with the Council for Tobacco Research and the Tobacco Institute and a handful of other firms. Hill and Knowlton perhaps has been thrown in on occasion. I have expanded that theory to include the American Medical Association, that they were a willful participant in the business activities of the American Medical Association -- of the tobacco industry.
Q That is your expert opinion?
A Yes, it is.
Q And what is that based on?
A That's based on my review. It's based on the research that we've been talking about here, but also my review of documents, the interviews that we just mentioned, my reading of some of the historical aspects of

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

the American Medical Association over the years.

Q Now, in what way specifically was the AMA a willing partner, slash, conspirator in the activities of the tobacco industry?

A You want me to go back and start at the beginning?

Q Give me a little --

MR. HOAG: For the record, your question is extremely broad. So, you want him to just give you the world in his answer? You meant it broad, right?

MR. McCONNELL: Sure.

Q (By Mr. McConnell) It's a broad issue, is that right?

A You want to ask the question again, so I can see if I could do that?

Q Sure. You just said that your thesis is that the AMA has been a willing participant, even conspirator, is that right, in the activities of the tobacco industry? Have I got that right so far?

A I didn't say they were a conspirator, you said that they were a conspirator.

Q Do you think they were a conspirator?

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

A I said that they were a willing -- and we could have this read back, but I said that they were a willing participant in the business practices of the tobacco industry.
Q Okay. Do you think that they were a conspirator?
MR. HOAG: Object to the form of the question.
A If you would define conspirator for me.
Q (By Mr. McConnell) It's in your title.
A The word conspiracy is in my title.
Q Right. What do you mean by conspiracy in your title?
A Collaborator.
Q Do you believe the AMA has been a collaborator with the tobacco industry?
A Yes. In fact, I say that in the draft of my paper.
Q In what ways? And it's a broad question and it calls for a broad answer, and go ahead and give me your broad answer.
A You're asking for the history on this very issue, which goes back to at least the --
MR. HOAG: You can answer, but I just want to put on the record I'm

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

going to object to the question, because it is overly broad and vague and needs to be broken down into subparts, but if you can -- whatever you can answer, you can answer, but I'm objecting to the question.

A I'm going to object to the question.

Q (By Mr. McConnell) What would help you break it down? I'd be happy to do that if there is some way that would make it easier for you to answer the question. Are there categories in which the AMA, in your opinion, has collaborated with the tobacco industry? Are there certain time periods? You tell me how to break it down, and I'll do it.

A Well, to be perfectly honest with you, the collaboration, as I defined it in terms of business practices, dates back to at least the early 1930s, when cigarette ads appeared in JAMA and other medical journals, including the 33 -- yeah, including the 33 state medical journals that were part of JAMA's group.

Q So, one form of collaboration is that the

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

medical associations permitted tobacco advertising in their journals, is that right?

A Well, they profited from it certainly. JAMA, in between 1952 and 1953, had received 100,000 -- actually, it was about $98,000 worth of cigarette advertising just for that one year.

Q Were cigarette ads the biggest advertiser in medical journals?

A Certainly not, no. Pharmaceutical companies were. In fact, pharmaceutical companies objected to the policy JAMA had for allowing cigarette advertising to appear in their journals because they were not held to the same scrutiny that the pharmaceutical companies were.

Q Do you know if there were any types of ads during that time period that the AMA refused to accept for their journal?

MR. HOAG: I'm sorry, I'm going to object to the form of the question, because it's unclear what time frame you're referring to.

A You didn't specify cigarette advertising.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

You said if there were any ads.
Q (By Mr. McConnell) Right, that's what I'm asking.
A The answer to that question is yes, there were pharmaceutical ads that were rejected and had to be resubmitted. They had an advertising committee at the journal of the AMA, but that committee did not review cigarette advertising, and that's why the pharmaceutical companies were complaining in the early 1950s, and which eventually, along with the complaints of physician members of the AMA, what eventually led to them discontinuing their advertising in not only that journal, but the 33 other state journals that belong to that group in January 1 of 1954, is when that policy took effect.
Q What sources have you consulted to help you research that aspect of the collaboration between the AMA and the cigarette companies -- that is the issue of advertising?
A We've just talked about all of them: Interviews, the books and journal articles and history, the published reports in news

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

publications, Wall Street Journal, New York Times, Advertising Age, Time magazine, documents that I'm sure you're about to present to me and ask me what they are for. But it's all of the -- all of those references that I've already listed.

Q Have you found any AMA documents that related to the issue of tobacco advertising in medical journals?

A Yes, certainly. Are you talking about documents or --

Q Yeah.

A I mean, describe a document. Do you mean an internal document within the AMA?

Q Correct.

A That dealt with cigarette advertising in their journals?

Q Correct.

A No.

Q Did you find any tobacco industry internal documents that discussed cigarette advertisements in medical journals?

A I don't believe I -- I don't believe so.

Q You mentioned interviews. Which interviews that you conducted related to the issue of

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Browse this item online at www.industrydocuments.ucsf.edu/docs/fsjl0001

cigarette advertisements in tobacco journals?

A Primarily with Dr. Alan Blum.

Q I misstated, I'm sorry. Cigarette advertisements in medical journals, I'm sorry.

A I didn't hear what you said the first time. I guess I'm not paying attention.

Q What I said the first time was wrong.

A Okay. Primarily with Dr. Alan Blum, who has written and published work on that very subject, and who was an employee of the AMA at JAMA. From 1980 to 1981, he was a Morris Fishbein Fellow.

Q He wasn't an employee of the AMA during any time period when the AMA accepted tobacco ads, was he?

A No.

Q What other interviews have you relied upon for that specific issue?

A My discussions with Ron Davis and Tom Houston, with Rick Richards, Dr. Leonard Schumann, Dr. Roy Ritts.

Q Were any of them working with the AMA during the time period when the AMA accepted

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

cigarette ads in its medical journal?
A No. Dr. Roy Ritts came later. He would have been in 1963 I think that he got there, but he was an employee of the AMA.
Q Now, that's one category of so-called collaboration that you mentioned, correct, the acceptance of cigarette ads in medical journals?
A Yeah. You actually broke the question down for me.
Q All right. Now, what other categories of so-called collaboration are there?
A Public relations collaboration.
Q What do you mean by that?
A Well, I'll give you one example. There are several examples, but one example would be alerting one another in terms of news releases that would be sent out and asking for comments on those types of publications, or journal articles that were published in JAMA where the galley proofs are sent to members of the tobacco industry to ask for, you know, their comments or suggestions. Those would be examples.
Q Is that kind of collaboration unique to the

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

tobacco industry, or has the AMA done similar things with other industries? In other words, if the AMA is going to publish an article in its journal on some product, that it would send an advance copy to the people making the product to comment on? Has that ever happened?

MR. HOAG: I'm going to object to the form of the question. It's compound and contradicts itself. I think first you said is that standard practice, and then you said has that ever happened. I object to the question.

MR. McCONNELL: That's a valid objection.

MR. HOAG: I know.

Q (By Mr. McConnell) Let's forget about standard practice then. Let's just say has it ever happened that the AMA would provide advance copies of articles to entities other than tobacco companies?

MR. HOAG: I'm going to also object to the form of that question because "ever happened" is so broad and

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

overly vague that I don't think it's within any one human being's ability to be able to answer such a question. That's my objection, but if you can answer, go ahead.

A I don't even remember what the question was.

Q (By Mr. McConnell) Well, you listed as an example of public regulations collaboration the fact that the AMA would occasionally provide draft articles to the tobacco industry?

A And news releases.

Q Right. Did the AMA ever do that for any other industry or company?

MR. HOAG: I'm going to object to the form of the question for the same reason I just gave a moment ago.

A Do I have evidence that they did that?

Q (By Mr. McConnell) Do you know whether they ever did that for any other industry or company?

A Yes, I do know that they have.

Q For what other companies?

A Some pharmaceutical companies, some health product companies the most recent of which

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Document from www.industrydocuments.ucsf.edu/docs/fsjl0001

was Sunbeam. Even subsidiaries of tobacco companies technically, Nabisco, because of the Fleischmann's Margarine campaign that was launched by the AMA and supported by RJR-Nabisco. So, those would be -- there's lots of examples, sure, out there that have been documented where they've done that earn.

Q Okay. Now, what are specific examples of --

MR. HOAG: Wait. Were you finished?

A I would say that, if they are collaborating with these companies, as they have in the past, pharmaceutical companies, Sunbeam, other product manufacturers and even tobacco companies or subsidiaries of tobacco companies, I'm saying that it is probably common courtesy to include them in certain aspects of public relations that would involve that collaborative agreement.

Q (By Mr. McConnell) What is the most recent example of this type of public relations collaboration between the AMA and the tobacco industry?

A The most recent example? It would have to

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Browse this set at www.industrydocuments.ucsf.edu/docs/fsjl0001

be prior to the termination of American Medical Television, where Philip Morris and RJ Reynolds both advertised on that network. It was a cable network.

Q When did that take place?

A Boy, that's a good question. I believe 1994 is when the network was cancelled. It may have been '95. So, I would assume that it was prior to that.

Q Can you name any example of this public relations collaboration between the AMA and the tobacco industry wherein the AMA and the tobacco industry agreed to perpetrate any kind of fraud?

A (Pause.) I can, but not off the top of my head. I'd need to look at some documents in order to be specific.

Q Do you have some general notion in your mind as to some fraud that they perpetrated together via public relations?

MR. HOAG: I'm going to object to the form of the question. It's overly broad and vague.

A I think the most -- one example that comes to mind is that in 1968, it was a

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Browse this item online at www.industrydocuments.ucsf.edu/docs/fsjl0001

publication in JAMA, it was an editorial published in August of 1968, where the galley proofs were sent to members of the tobacco industry ahead of time to be held confidential, obviously, until publication, the date of publication, where, as far as I could see in comparing what was actually published and the draft version that was sent to the industry, only a few words were actually changed. And I can't tell you exactly who changed those words, but it was a collaborative effort that described the AMA-ERF project, that -- where the Council for Tobacco Research was mentioned in the article, and where the AMA-ERF Committee on Tobacco and Health was in agreement with the Council for Tobacco Research that the 1964 Surgeon General's report, even four years later -- this is in 1968, and again I'd have to read that specific document to give you the exact wording of the language that was used, but in a sense, they worked together -- in fact, there was a -- let me go back even further.

There was a meeting in June of 1968 at

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Browse this new web at www.industrydocuments.ucsf.edu/docs/fsjl0001

the annual meeting of the AMA where members of the tobacco industry, including lawyers, representing the companies, the six companies who sponsored that project, members of the Council for Tobacco Research, and it's very obscure actually the way that the participants at this meeting were identified, because I -- some of those people who have sat on CTR were also members of the AMA-ERF committee. So, it's very interesting how they were chosen. Members of the National Institutes of Health were present at that meeting and members of the Tobacco Institute. So, you had those four categories of people were represented at that meeting.

At that meeting, the very language that was going to be published as part of the, quote, AMA-ERF report, which is what that editorial was in August of 1968, was challenged at that meeting by two physicians, two doctors, Dr. Leonard Schumann and Dr. Stanhope Bayne-Jones. They were members of the original Surgeon General's committee, and they objected to

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

the language that was being used at this conference, and they held their own separate press conference. I don't think it got much attention, although there was an article published in the San Francisco Examiner, or one of the San Francisco newspapers -- I don't know if there's more than one or not, but the San Francisco newspaper. They disagreed with the language that was used to describe the Surgeon General's report. And I think that that would be an example of where the AMA collaborated in a public relations effort with the tobacco industry to, No. 1, publish something very specific about the Surgeon General's report in 1968 in JAMA, in August of '68 in JAMA; and, No. 2, to try to squelch two physicians who were very upset about that information.

Q As a result of the public relations collaboration that you just described in that specific example between the AMA and the tobacco industry, did the AMA and/or the tobacco industry issue a false statement?

A Yes, they did.

Q What was the false statement?

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

A Give me the journal article, and I'll point it out to you. They refuted -- they refuted the conclusions of the Surgeon General's report in that statement that was published, that was made there at the meeting and that was later published in JAMA. They refuted the conclusions of the Surgeon General's report.

Q Can you recall the specific false statement as you sit here, without seeing the document?

A Not word for word, no. I'd have to look at that journal article as it was published in JAMA.

Q Is any statement that disagrees with the conclusion of the 1964 Surgeon General's report a false statement?

A No, I don't think that would be a false statement.

Q As you sit here today, can you recall any false statement in any instance?

A Again, you have to remember that three of the members of the AMA-ERF committee at that time were also on the Surgeon General's report committee: Dr. Maurice Seevers from

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

the University of Michigan, whose boss, by the way, was Clarence Cook Little from the University of Michigan before he left and went to run CTR, or -- yeah. You have to remember that Dr. Mickey Lemaistre, Charles Lemaistre -- don't ask me how to spell that.

Q L-e-m-a-i-s-t-r-e.

A And Dr. John Hickam, those three people were members of the Surgeon General's committee. Is it false statement to say that the conclusion, the primary conclusion of the Surgeon General's report that smoking causes lung cancer in men, causes lung cancer in men -- that was the primary conclusion, for those three people to join in with the tobacco industry and say that the evidence wasn't conclusive is a false statement, and they did that willingly with the tobacco industry.

Q Can you name any other false statement that you believe was issued as a result of a public relations collaboration between the AMA and the tobacco industry?

A Another example that comes to mind is an invitation by the Tobacco Institute to the

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

American Medical Association to participate in a publication called -- I don't have the document in front of me. I think it was "The Smoking and Health Controversy." I would -- that was, I think, first published in 19 -- about the same time, I believe, 1968. I'd have to have the document in front of me. I know it's sitting in that stack, pile of paper over there. That's an example of where they collaborated on a document that was used for public relations, and, in fact, that was put together by two groups, the Tobacco Institute and the Tiderock Corporation, which is a PR firm. They collaborated on specific portions of that publication.

Q What was the false statement?

A I'd have to look at the document so I could read it back to you.

Q You can't recall right now, as you sit here today?

A Not word for word, no, I can't.

MR. HOAG: I'm going to object. The document's available if you want to show it to him. He said he could point

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

it out to you.
Q (By Mr. McConnell) I'll show you all the documents. I don't know which one you're talking about. When we get to it, we'll get to it. If I don't show it to you, tell me, and if you've got it there behind you, let's look at it.
MR. HOAG: Well, he's not going to remember everything that we --
THE WITNESS: No, I will. I know exactly what document it is. I couldn't tell you the Bates number on it, but I know exactly what document it is.
MR. HOAG: Well, why waste time? Want to look for it now? He just told you he could identify it. Why don't you show it to him?
MR. McCONNELL: Why don't we wait until the next break. Let me just continue this line of questioning.
Q (By Mr. McConnell) As you sit here today, is there any false statement that you can recall that was issued as a result of the public relations collaboration between the

http://legacy.library.ucsf.edu/tid/nur07a00/pdf
Support provided by the UCSF Library
http://www.industrydocuments.ucsf.edu/docs/fsjl0001

AMA and the tobacco industry?

MR. HOAG: And you're saying can recall without looking at the documents in front of you that you could show him right now, correct?

MR. McCONNELL: Sure.

MR. HOAG: You just want to rely on his memory?

MR. McCONNELL: Just make your objection and then let him answer the question.

MR. HOAG: I think this is a waste of time.

MR. McCONNELL: I don't care what you think.

MR. HOAG: Well, I do, and I'm going to make a record. These things are available for you to show him. There is one just now that he said he could just look at and show you examples. You choose not to go into it. Now you're asking him what he can recall off the top of his head without looking at a document?

MR. McCONNELL: John, I want to

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Support provided by www.industrydocuments.ucsf.edu/docs/fsjl0001

exhaust his recollection, then we'll go through the documents. I don't want to have to keep going back to the documents after each example, all right?

Q (By Mr. McConnell) Do you have the question in mind?

A Yeah, I think so.

Q All right.

A Another example is there was a magazine article written in which a member of the AMA-ERF was quoted. His name is John Hickam. He was also a member of the Surgeon General's committee. This magazine article was published in January of 1968 in True magazine. John Hickam, although he was still at that time serving the AMA-ERF committee, was not cited as such. He was cited as a member of the Surgeon General's committee from 1964, rather than his current position. That article was written by a person by the name of Frank -- Stanley Frank or Frank Stanley. Stanley Frank. And Stanley Frank was an employee of Hill and Knowlton when that article was published.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

And Hill and Knowlton at that time was representing the Council for Tobacco Research and the Tobacco Institute. And that article dealt with -- I forget even the title of it, but it dealt with refuting the claims about the links between smoking and cancer. It wasn't specifically lung cancer in that article, just cancer. That magazine article was then distributed by Tiderock Corporation on behalf of the Tobacco Institute to literally hundreds of thousands of people, including physicians in the United States. I think it was to basically -- the entire membership of the American Medical Association at that time was probably, I don't know, 250,000, 300,000 physicians. And that's an example of where I think someone's identity was falsely -- or was mischaracterized in an article that was written by somebody who worked for the tobacco industry.

Q Did that True magazine article contain any mis-citations, misquotations or misuse --

A There were no citations in it. It was a magazine article.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Browse this new web at www.industrydocuments.ucsf.edu/docs/fsjl0001

Q There were quotations, weren't there?
A There were some quotations, yes, by a number of researchers who they called in the article independent, but who were not independent. They were receiving money from the Council for Tobacco Research.
Q Were any of the quotations false, as far as you can recall?
A Are you talking about the quotations from the researchers who were cited?
Q Correct.
A John Hickam's was false. That's the one I remember most closely.
Q What was the false quotation?
A He said that the -- that when he worked on the Surgeon General's committee, he didn't have -- they didn't have the numbers to show some sort of cause-and-effect relationship. I don't know. That's not word for word obviously. I'd need to read the article or have it in front of me.

So, in other words, he's refuting what he, himself, signed his signature to and stamp of approval for the Surgeon General to release in January of 1964.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

Q He's giving an opinion that you think is contrary to the opinion he signed off on in the '64 report?
A He's making a false statement.
Q How is it a false statement?
A There is no question in the mind of any medical person, medical organization on this planet other than those who might be working for the tobacco companies, that in 1964 the evidence was conclusive that smoking caused lung cancer in men, period.
Q So, anybody after the '64 SG report who says "I'm not convinced that smoking causes lung cancer in men" is a liar? Is that your opinion?
MR. HOAG: I object to the form of the question.
A I think -- we're talking about someone who was part of the Surgeon General's committee, and we're not talking about just anybody who's out there. And I'm not calling researchers who didn't agree with that report liars. I would ask the question: What was the motivation for them to disagree with the report publicly? What was their

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

motivation to do that?
Q (By Mr. McConnell) Are there any other examples that you can think of where lies were issued as a result of the public relations collaboration between the AMA and the tobacco industry besides the ones you've already named?
A Again, there's -- we've talked about everything that I've, you know, relied upon to investigate this entire issue, and there's no way that I'm going to be able to remember every specific example. I think I've given you three very good examples.
Q I'm just trying to figure out what you do remember before you see any documents, before I show you the documents. So, are there any others that you can remember sitting here, without looking at documents?
A If I sat here long enough, I'd probably think of some more. I mean, how much time do you want to spend?
Q I'm just asking what you remember right now.
MR. HOAG: That's without looking at anything?
MR. McCONNELL: That's right.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

MR. HOAG: How much time do you want him to spend contemplating this?
MR. McCONNELL: Right now.
Q (By Mr. McConnell) If you can't think of any right now, that's fine. I'm just asking what other ones can you think of right now?
MR. HOAG: So, whatever you can think of in the next five seconds or so, without looking at anything.
MR. McCONNELL: You're being so obstructive. This is going to be a great record for Judge Kaye. Just keep doing it, John, keep doing it.
MR. HOAG: I think the fact that you are asking him to do this and giving him no time to do it -- he's telling you if he could just think about it for a while he could probably come up with some. Without wanting him to look at any documents is a total waste of time, and it's -- it's typical, because you've already had him for like 600 pages of deposition, including lots of times asking about the AMA and lots of documents that you

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

didn't show him during that second deposition.

MR. McCONNELL: Keep going. If we have to continue this thing tomorrow, it's on you.

MR. HOAG: And the fact that Mr. Moss represented to the Court incorrectly that in your second deposition this stuff wasn't already addressed. That's part of the reason we're here even dealing with these questions.

Now, I'm going to object to questions relating to the AMA, because you had ample opportunity to ask questions about the AMA in the second deposition which took hundreds of pages, and the statements made to the Court that were incorrect about what you did during that deposition.

MR. McCONNELL: You already placed it on the record. Why do it twice?

MR. HOAG: Because you're getting into this with such not only minute detail, but you're asking him to recall

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

things without looking at documents when you have the documents in front of you.

MR. McCONNELL: He's going to get a chance. You don't show a document to refresh somebody's recollection until you first establish that they don't have a recollection, John. Do it right, all right?

Q (By Mr. McConnell) Now, I'm asking, as you sit here, if you can recall -- and you've had some more time, haven't you, to think about it? So, if you've thought of any, please let us know.

MR. HOAG: He's had another 90 seconds to think about it.

A At the moment, I can't recall any more examples in dealing with whatever your question was.

Q (By Mr. McConnell) All right.

A I think it was public relations examples of where the industry and the AMA worked together to create false statements.

Q Right. What I'd like to do now, and it's probably a decent time for a break anyway,

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

is I'd like to hand you this stack of documents. These are the documents that I brought with me. I've received so many documents from these guys and so many exhibits numbers, I'm not representing to you that I've got them all here.

A Okay.

Q Please take a look at the ones that I do have here and tell me how much time you'll need, take as much time as you need to flip through these.

A Okay.

Q My question after you're through doing that is, now, having looked at these documents, first tell me if that refreshes your recollection as to any other examples of false statements being issued as a result of public relations collaboration between the AMA and the tobacco industry.

A Okay.

Q After that, I'm going so ask if there are other documents you have behind you that you need to look at after you look at this stack. Okay?

A Okay.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

MR. McCONNELL: Why don't we go off the record?

MR. HOAG: For the record, I object to the form of this question because it's a limited, selected group of documents. It doesn't include all the documents, and for him to know whether or not there's other things in the other documents without looking at all of them is really impossible for the witness anyway.

MR. McCONNELL: Well, while we're putting things on the record, let me just state that I object to the shell game that Plaintiffs continually engage in in this case where we ask what documents they're actually going to be relying upon for direct testimony, and they give us about ten times as many documents as they end up using in their testimony in court, and I think it's outrageous. But since those are the games you're playing by, we're all stuck with it. Let's go ahead.

MR. HOAG: What I think is

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

outrageous is all the documents we gave you about the AMA that this witness had and gave to you before the second deposition, that you picked some of them to ask him about, and then the Court was told that he wasn't -- none of these questions were asked and none of these documents were provided.

MR. McCONNELL: Let me say this: Can I get a representation from you that every document that you people have provided with respect to this deposition, his trial testimony, are documents that you provided in advance of the second deposition? Are you making that representation on the record?

MR. HOAG: No.

MR. McCONNELL: I don't think you can.

MR. HOAG: No, and I don't appreciate you yelling. There's no point to the yelling. The record speaks for itself. What is is, and, no, every document that's in this

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

deposition is not, because that's based on the Judge's ruling that there is a third deposition that's taking place now, and you've been provided with additional documents today.

MR. McCONNELL: All right. We're off the record.

(A short break was taken.)

Q Just to set it up, let me make a record as to what documents it was specifically that I handed to Mr. Solberg. And, Mr. Solberg, I hope you can go through your list and confirm that I'm reading it out properly. First, these are Engle trial exhibit numbers. Plaintiffs' Exhibit 5493, is that correct?

A Yes.

Q The next is Plaintiffs' 5494?

A Yes.

Q The next is Plaintiffs' 5488?

A Yes.

Q The next is Plaintiffs' 5495?

A Yes.

Q The next, I don't have an exhibit number. Do you? It's a couple articles from the

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Chicago papers, is that right?
A No, I don't.
Q And you have that?
A I have it.
Q We're talking about the same thing, but there's no exhibit number, is there?
A Correct.
Q Well, that's the way I've got it, so at least we have the same thing. The next is Plaintiffs' Exhibit 5489?
A Uh-huh. Sorry, I'll say yes.
Q The next is Plaintiffs' 5490?
A Yes.
Q The next is 5491?
A Correct.
Q The next is Plaintiffs' 3793, is that right?
A Yes.
Q Then Plaintiffs' 5487?
A Yes.
Q Then Plaintiffs' 5486?
A Yes.
Q Then Plaintiffs' 3791?
A Yes.
Q Then Plaintiffs' 562?
A Yes.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Then Plaintiffs' 4080?
A Yes.
Q Then Plaintiffs' 1085?
A Yes.
Q Then Plaintiffs' 1720?
A Yes.
Q Then Plaintiffs' 4082?
A Yes.
Q Then 4083?
A Yes.
Q Then 208?
A Yes.
Q Then 4085?
A Yes.
Q Then 4658?
A Yes.
Q Then 5496?
A Yes.
Q Then 259?
A Yes.
Q Then 4089?
A Yes.
Q The next two are ads which I probably shouldn't have included in the list, but just for the sake of completeness, it's 5483

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

and then 5484, correct?
A Yes.
Q And just for me to represent to you, these are among the --
A I had one extra in my stack.
Q Oh, you did?
A (Indicating.)
Q 5492?
A (The witness nodded his head.)
Q Okay, that's fine. These are among the documents that the Plaintiffs' lawyers have indicated you are relying upon for your testimony in the case. There are some others that they gave that I didn't bring along, basically because I couldn't carry them. So, let's first confine ourselves to this stack that you've just been through. You've taken the time to look through them, correct?
A Yes.
Q And the question that was on the table was can you recall any false statements that were issued as a result of collaboration between the AMA and the tobacco industry. Now, based upon these, just this stack of

http://legacy.library.ucsf.edu/tid/xur07a00/pdf
Support provided by www.industrydocuments.ucsf.edu/docs/fsjl0001

documents, first -- then you'll be free to consult whatever other documents you've got, but just based upon this stack of documents, did you find other examples of that?

A Actually, we were talking about public relations examples --

Q Okay.

A -- before the break, rather than general examples of what you just said. Yes, I missed probably the most significant, which is that both the American Medical Association and the tobacco industry, collaboratively through the Tobacco Institute, made statements that the research project that was being conducted by the AMA-ERF was independent, which is a false statement, and that statement was repeated over and over and over again between 1964 and 1978.

Q What documents in this stack indicate that opinion that you just gave?

A Collectively, I think you have to look at them collectively first, and then I'll break it down. The Council for Tobacco -- excuse me. The American Medical Association-ERF

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

set up a committee to administer the project that was funded by six tobacco companies. Those committee members, chosen by the AMA or however they were chosen, also included representatives from the tobacco industry who had long-standing ties with the tobacco industry, most notably Dr. Paul Kotin, who at least as early as 1957 or '58, was conducting research for Philip Morris, who served on the Scientific Advisory Board of CTR since I believe around '57 through the period that he served on the AMA-ERF committee; Dr. Paul Larson, who, in addition to serving on the AMA-ERF committee, also was a consultant to American Tobacco Company in conducting research and who received numerous grants from the Council for Tobacco Research, as well as the American Medical Association-ERF. In fact, Paul Kotin also received money from CTR, sat on CTR's Scientific Advisory Board, and received money from the AMA-ERF.

Dr. Maurice Seevers served on CTR's advisory board and the AMA-ERF committee. In fact, he chaired the AMA-ERF committee.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Document from www.industrydocuments.ucsf.edu/docs/fsjl0001

His institution received huge sums of money from the AMA-ERF and also from CTR.

Dr. Charles, or Dr. Mickey Lemaistre, who served on -- I should also point out that Dr. Maurice Seevers has also served on the Surgeon General's report.

Dr. Mickey Lemaistre, who also served on the 1964 Surgeon General's report, received I believe the most money from the AMA-ERF, his institution, which would be Southwestern Medical Center up in Dallas. He also received large amounts of money from CTR.

Let me check, just to make sure I'm not leaving anybody out. (Referring to documents.)

Dr. Richard Bing -- I knew I'd leave someone out -- served on both the AMA-ERF committee and the Scientific Advisory Board of CTR, received money to conduct research from both.

I think I've got them all. I should just add that there's a number of the members of the committee of the AMA-ERF that received money from both the AMA-ERF and

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Browse this page at www.industrydocuments.ucsf.edu/docs/fsjl0001

from the Council for Tobacco Research, and that's indicated actually in a separate document called "Tobacco and Health" that was a final report for that project published by the AMA.

Q And I have copies here for you to take a look at them. Were there other scientists besides the scientists that you've named who received substantial funding through the AMA-ERF?

A That's a good question. Most of the money from the AMA-ERF went to members of its own committee. In fact, I already mentioned that Charles Lemaistre made off like a bandit, literally. He I think in the first four or five years of the project received close to $2 million.

Q Is that money that he personally received?

MR. HOAG: Were you finished with your answer? You said he received close to $2 million. Was that all you had?

THE WITNESS: Yeah.

Q (By Mr. McConnell) Was that money that he personally received?

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

A It went to his institution in which he directed research.
Q What was his institution?
A Southwestern Medical School -- Southwestern -- I forget what it's called exactly. It's Southwestern Medical something in Dallas, Texas.
Q So, how much money went to his institution over what period of time?
A Between 1964 -- they didn't start handing out grants until about May of '64, and I believe it was around 1968 he had received about $2 million, give or take, you know, six figures.
Q You say he received, but it was money that went to his institution?
A To his institution. It went to researchers at his institution, of which he had direction over. He was dean.
Q Do you know to what extent he personally profited?
A Well, how can you judge a person's career? Certainly, his career profited a great deal. You are measured in the academic field, as I know from being at Baylor College of

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Browse this item at http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Medicine, and part of the reason I'm no longer there, that your career, your success of your career is measured in the amount of grant money you bring into that institution. You don't bring in grants, you don't publish, you're out. That's the way it works. In medicine, it does.

Q Just in terms of money, do you know the extent to which he profited through AMA-ERF?

A Monetarily, you're speaking?

Q Correct.

A I don't know he, personally.

Q Let me ask the same questions for the other people you mentioned. We'll break it down. Paul Kotin, how much money went to his institution through AMA-ERF?

A Well, Paul Kotin's a different example. He was also paid directly. Remember, he was a consultant to Philip Morris. He was also -- you have to also remember, by the way, that these people were paid to serve on various committees. They don't just do this for free. Certainly travel reimbursement and, according to Roy Ritts, they got to travel to some of the greatest places for their

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Browse this document online at www.industrydocuments.ucsf.edu/docs/fsjl0001

meetings of the AMA-ERF meetings, but -- so, they certainly made money doing this for themselves. It wasn't simply their institutions.

Paul Kotin is a different kind of example, because he worked directly for a company, a consultant to a company, which he was paid -- for which he was paid. He was at an institution, I forget which one, I believe somewhere in Los Angeles while he was doing that. So, I'm assuming that he -- that that may have gone through the institution. He may not have been paid directly there in that case. Council for Tobacco Research Scientific Advisory board compensated the members.

Q Over what time period did Mr. Kotin work for Philip Morris?

A I'm not exactly sure. I know that it started in either '57 or '58, and I don't know exactly how long he may have worked for the company, consulted for the company.

Q Could it have ended prior to his involvement with AMA-ERF?

A It may have. I don't know that.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Browse this new web at http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Now, just through AMA-ERF, how much money did Mr. Kotin personally make, if you know?
A I don't know. And I should -- just on the last question, he was still serving on the CTR Scientific Advisory Board while he was on the AMA-ERF, as I've already mentioned.
Q The same question with respect to Paul Larson: How much money did he personally make through AMA-ERF?
A That's another good example. I don't know how much he personally made, but he was a consultant to American Tobacco while he was at the University of -- it was in Virginia. I forget the name of the university there.
Q Was he a consultant to American Tobacco at the same time he was on AMA-ERF?
A Yes, I believe so. Yes.
Q What's your evidence for that?
A There's a document that's not included in the stack here that indicates that he was.
Q The same question with respect to Maurice Seevers: How much money did he make personally through his involvement with AMA-ERF?
A I don't know what he was compensated as

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

chairman of the committee at the AMA-ERF. I don't know how much he made at CTR either while he was on the Scientific Advisory Board. I don't know.

Q The same question with respect to Richard Bing: How much did he personally make from his involvement?

A I don't know. I don't know. I think when we look at the "Tobacco and Health" document we can go through very carefully, as I have done in the past, and calculate exactly how much those universities and institutions that those individuals served as either deans or presidents or research directors actually received.

Q Do you believe it's the case that the institutions associated with Messrs. Kotin, Larson, Seevers, Lemaistre and Bing were the institutions that received the most money from AMA-ERF, or were there other institutions not affiliated with those gentlemen who received as much, if not more money, than some of these institutions?

A There were --

MR. HOAG: First of all, I object

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

to the form of the question. It's pretty confusing. It's vague and overly broad. Go ahead.

A There were other institutions that received as much money as, for example, the University of Michigan, where Maurice Seevers, the chairman of the AMA-ERF committee, you know, was tenured. I did make the statement, and I'll stand by that, that the person who -- the institution that received the most money between 1964 and 1968 was Charles Lemaistre, southwestern Medical Center in Dallas.

Q And that institution received money for performing studies that were funded via AMA-ERF, correct?

A That's correct.

Q And some of those studies were also cofunded by other entities, isn't that right?

A Correct, including the Council for Tobacco Research.

Q But also including the U.S. Public Health Service?

A Some may have been. I'd have to check and see exactly who was in this, yes.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Support provided by www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Some cofunded also by the American Cancer Society?
A And the American Heart Association, yes. The lung association wasn't involved, I don't think, in any of them.
Q Is it your opinion that any study that was cofunded by CTR was inherently compromised scientifically?
A Not every study, no. I think that you have to look at the documents that discuss, and there's one in the stack here that discusses how CTR chose the projects that they funded. And it was not some simply, you know, a peer review process where the grants are looked at. There was a predetermined bias as to what kind of studies would be most beneficial for the industry to fund.
Q You don't believe the U.S. Public Health Service had that same predetermined bias, do you?
A Certainly, they do. They put out an RFP, a request for proposal. That RFP spells out very clearly exactly what you can and cannot apply for. And when you're talking about the National Institutes of Health or the

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Public Health Service, as you said, make sure you include the National Cancer Institute, who for about 10 years under the direction of Gio Gori, was conducting research to find a, quote, safer cigarette.

Q With respect to the Public Health Service --

A But I'm just using that as an example, that the research that was funded by NCI under Gio Gori's program was done with a very, very narrowly focused bias on the kinds of research that they would fund.

Q Is it your opinion that the Public Health Service had a similar bias, either in favor of the industry or in favor of seeking a safer cigarette, as opposed to something else?

A NCI is part of the Public Health Service.

Q Right. But not every Public Health Service funding is through the NCI, correct?

A No. Some is through NHLBI. In fact, there was a lot of criticism that the National Cancer Institute, the National Heart, Lung and Blood Institute, and the Clearinghouse on Smoking and Health were not collaborating on their efforts. And so there was, you

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Support provided by www.industrydocuments.ucsf.edu/docs/fsjl0001

know, a big to-do about that, both within and criticism from outside the Public Health Service.

Q Now, what got you into naming these gentlemen and their institutions and the funding was your statement that there was a falsehood in representing that the AMA-ERF was independent, correct?

A That's correct.

Q All right. Besides the role of these individuals, is there other evidence that you can cite based upon what you've looked at that shows that the AMA-ERF was not independent?

MR. HOAG: When you say the documents you've looked at, are you narrowing it just to those you've shown him just now?

MR. McCONNELL: We'll first narrow to this.

A The commingling of money at the research institutions.

Q (By Mr. McConnell) What commingling of money?

A Money from AMA-ERF and CTR to fund the exact

http://legacy.library.ucsf.edu/tid/xur07a00/pdf
Support provided by the UCSF Library
Digitized by Arcadia
http://www.industrydocuments.ucsf.edu/docs/fsjl0001

same research or doing the exact same study.
Q The cofunding that we've already talked about?
A Right.
Q But again, as you stated --
A You said just those individuals, and I'm saying there are more general, it goes far beyond those six or seven individuals that I named specifically.
Q But also cofunding took place between AMA-ERF and entities other than CTR, correct?
A Yes, that's correct.
Q Does that also indicate a lack of independence on the part of the CTR?
A It certainly does, yes. You'd better believe it.
Q Well, can you name a public health organization in this country that never engages in cofunding?
A I don't know. I'd have to look at the records, as I've done in this case.
Q What other evidence do you have that AMA-ERF was, in fact, not independent?
A Well, the origins of the money indicate that

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

it wasn't completely independent.
Q In that the money came from the tobacco industry?
A Correct.
Q What else?
A The meetings that they engaged in with the tobacco industry.
Q What meetings?
A They had a meeting in -- well, let's see. I'll have to check dates here on the documents. One in Scottsdale, Arizona, but I think that was the second one in 1970. The first one was probably 1968 in San Francisco at the AMA's annual meeting. I've already alluded to that earlier.

Yeah, the first one was in '68 in San Francisco in conjunction -- that would have been in June of '68. The second one -- I talked about that meeting earlier. That's where some of the statements that were made were actually being refuted by a few physicians, actually including Dr. Daniel Horn, who disagreed with statements that were made at that meeting as well by the AMA and the tobacco industry.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

The second one was in May of 1970 in Scottsdale, Arizona, and they used these meetings -- these were -- it was the AMA-ERF committee for research on tobacco and health. I don't know what kind of meetings you'd call it. Scientific meetings where abstracts are presented and so on and so forth.

Q What took place at those meetings to compromise the independence of the AMA-ERF?

A The involvement of lawyers with executives of the AMA. Actually, that's a separate meeting. That would have been in -- let's see. That would have been in January of '68, where the AMA-ERF committee, the executives of the AMA and executives and lawyers from the tobacco industry and the Tobacco Institute, the companies in the institute, met to discuss the project.

Q Is there any example ever where the AMA-ERF declined to fund a study because of something that a tobacco lawyer said or did?

A No one knows what the review process was. In fact, the industry kept continually asking the AMA what their review process

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

was, and they tried to describe it at some of these various meetings, but it was very unclear. I think that if you take a look at those first five years of the project, you understand that one of the criteria apparently was that you were a member of the AMA-ERF committee. That's how the money was handed out. And they were criticized, both publicly and by the members of the AMA and by the tobacco industry, because they felt that, you know, they were simply padding their own budgets at the universities. Their response to that was that none of the applications -- they weren't getting enough applications, and of those that they were getting, they weren't very good.

Q Do you know if that's a false statement?

A I'd have to take a look at all the applications that they received.

Q Back to my question. It sounds like the answer is you don't know, but I want to make sure I've got it right and I'm not misstating your answer.

Do you know of a single example where an AMA-ERF study was declined, the AMA-ERF

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

would not fund a study because of something that a tobacco lawyer said or did? Can you name any example where that happened?

A No. I know that they discontinued several projects after meetings with tobacco industry representatives, not just lawyers, but others. That's about all I can say.

Q Do you know if -- well, I'm actually first focusing on -- no, no, we'll go back to your answer. Your answer is perfectly appropriate, I'm sorry.

Do you know of an example where a project was -- did you say cancelled?

A Discontinued.

Q Discontinued, okay.

A Funding was discontinued.

Q Do you know of an example where a project was discontinued because of something that any tobacco industry representative said or did?

A Not from the study -- not from the studies that were discontinued, the examples that I can think of, no.

Q Can you think of any example where the AMA-ERF decided to fund a study because of

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

something that any tobacco industry representative said or did?

A The very nature of the project was based on what the industry told the AMA-ERF committee that wasn't being studied enough. That was the emphasis.

Q Which is what? What was it that wasn't being studied enough?

A To discover what the harmful components in cigarette smoke were and to remove them. That emphasis was put on by the industry and was continually emphasized in these documents throughout that project. In fact, so much so that when, in 19 -- I believe it was in 1970, in Scottsdale, Arizona, at the second research conference that the AMA-ERF had, the directors or assistant directors from each of the tobacco companies that were funding the AMA-ERF attended the meeting and stated that they were not focusing on what they said they were focusing on, and it was important that they do so.

Q And did that statement by the tobacco industry result in any change by the AMA-ERF in terms of what studies they would fund or

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

not fund?
A No. What happened was that the criticism of the tobacco industry representatives at these meetings, namely the research directors, and most specifically the criticism of Dr. James Mold and Dr. Helmut Wakeham -- Mold was a Liggett researcher and Wakeham at Phil Morris. The specific recommendations to the tobacco company executives and to their bosses in their own research departments was that the AMA-ERF project that was being funded by these companies was not only not on target, that the majority of the grants had nothing to do with what they stated they were going to do at the very beginning, and that this was producing no scientific assistance to the industry. Why then in 1968 did the tobacco companies, after this is being said to them, why then did they give more money to -- an additional $8 million to the AMA-ERF to continue the project?
Q What's your answer to that question?
A That the tobacco companies simply wanted to have more research out there and to simply

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Browse this at www.industrydocuments.ucsf.edu/docs/fsjl0001

-- it didn't matter if the research was going in any particular direction, other than to say that they were funding more research. They could continually say that more research is needed. To this very day, they say that more research is needed. To this very day, defense lawyers in tobacco litigation say that there is more research needed.

Q You mentioned James Mold?

A Yes.

Q Wasn't his criticism of AMA-ERF work that too much of it focused on nicotine?

A Yes, that was one of his criticisms.

Q Wasn't it his major criticism?

A No, it's not. There was two that are in the same sentence, and we can refer to that document.

Q We do have that document here, don't we?

A I think I saw it. That would be --

Q It's 1720?

A Right. And if you turn to page -- I believe it's the last page, 4, "The chief criticism I have of the studies which did not involve nicotine or respiratory function is that

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Document from www.industrydocuments.ucsf.edu/docs/fsjl0001

they represented too small an effort."
That's two of then. He's criticizing the
ones that focus so much effort on nicotine.
There were too many of those, but he's
saying of those that did not involve
nicotine is that they represented too small
an effort, only about 20% of the total in
areas where the most damaging evidence
exists for a hazard associated with smoking.
Q Well, you left something out, though, didn't
you? It says, "The chief criticism I have
of the studies which did not involve
nicotine or respiratory function is that
they represented too small an effort, about
20% of the total, in areas where the most
damaging evidence exists for a hazard
associated with cigarette smoking." I read
that correctly, didn't I?
A Correct.
Q And looking at the first page of this
document, doesn't he say that he made a
rough count of the papers presented in
Scottsdale, and he found that two-thirds are
rather directly related to the effects of
nicotine on man or animals and their

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

biological systems? Is that right?
A Sure.
Q And you've looked at the "Tobacco and Health" publication, correct?
A Correct.
Q And he's right, isn't he, that there's a lot on nicotine?
A That's correct, which was away from the stated target, the stated focus of the very program.
Q Do you think that's bad science, to focus on nicotine?
A I think that they were not attempting to fund research that would discover anything new with respect to their stated goals that were announced in 1964 and re-announced in 1968.
Q Is it your opinion that the effect of nicotine on the body is irrelevant to the issue of smoking and health?
MR. HOAG: I object to the form of the question, mischaracterizes his prior testimony.
Q (By Mr. McConnell) I'm just asking you, do you believe that, that the effect of

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

nicotine on the body is irrelevant to the issue of smoking and health?

MR. HOAG: I'm going to object to the form of the question. It's outside of the scope and the purpose of this deposition.

A Do I believe that it's irrelevant?

Q (By Mr. McConnell) To the issue of smoking and health.

MR. HOAG: Same objection. This is wasting time.

A No.

MR. HOAG: It's way outside the scope of the purpose of this deposition. We are not offering him as a nicotine expert, and you know it.

Q (By Mr. McConnell) Go ahead.

A I don't agree that it's irrelevant.

Q He then says, "Even after all this experience, many of these studies are rendered of little value because the levels of nicotine or smoke are not realistic in terms of reasonable smoking exposures," correct?

A That's correct, but if you take a look at

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Browse this document online at www.industrydocuments.ucsf.edu/docs/fsjl0001

the studies, most of them dealt with animals. That was another criticism, that almost all of these studies were animal studies, and that was another criticism. The same criticism that the AMA or that the tobacco industry made of Wynder in 1953, when he published his studies on rats, or on mice, excuse me. And, you know, to be perfectly honest with you, while they criticized that publicly, they were hiring Ernst Wynder to do those very same studies in their own company and to tell them how he did the studies and to show them the machines.

Q Do you have an opinion as to whether or not that criticism of the utility of animal studies is a valid criticism or not?

MR. HOAG: Object to the question in that it's outside the scope of this deposition.

A I tell you what, I know that when I took a course in human physiology in the medical school at the University of Minnesota, we had a dog lab. Every year you do a dog lab, and this is a two-quarter long course, and

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

in the second quarter you have a dog lab. And I was -- I was a graduate student taking this course along with medical students, and they pair up four students per animal. And you do all kinds of experiments on this animal, but part of that involved, you know, cutting on the animal, so on and so forth. And I tell you what, I was paired up with three medical students, none of which wanted to cut this animal open to conduct some of these experiments. So, I as a graduate student, who will never be cutting on people ever, decided to do this. And I asked all of them, "At some point in your life, some of you may have to cut on people. Don't you think it would be a good idea to do it on animals first?" They all agreed that yes, it was, and so they all got their hands dirty along with me. But I think that's a very good example of why animal research is very important.

MR. HOAG: And again, this is not what he's being offered as an expert for, and you know it. This is a waste of time, and I strongly object to

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

asking him questions about things like this during this deposition.

Q (By Mr. McConnell) Is it part of your opinion that you're going to offer to the jury with respect to the AMA and its relationship with the tobacco industry, is it part of your opinion that the studies funded by the AMA-ERF were irrelevant to the issue of smoking and health?

A No, that's not part of my opinion.

Q So, let me make sure I've got that nailed down. You're not offering an opinion whatsoever --

A I think they were very relevant to the issue of smoking and health.

Q Is it part of your opinion that you're going to offer to the jury in this case regarding AMA and smoking and health, that the studies performed by the AMA, funded by the AMA-ERF, were in any way bad science?

A No, I'm not -- that's not part of my opinion. My opinion is that those studies that were funded by the AMA-ERF did not meet the goals and objectives stated by the AMA-ERF committee at its inception and

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Browse this document online at www.industrydocuments.ucsf.edu/docs/fsjl0001

throughout its existence until about 1971, when they stopped putting out news releases and publishing reports in JAMA. Or 1972, actually.

Q In the documents that I've shown you that you've got in front of you, is there any statement as to what the initial goals were of the AMA-ERF?

A Yes, there are.

Q Why don't we look at that.

A Referring to 5489, on Exhibit No. 5489.

Q Okay.

A This is, I believe, the first announcement in any of their own publications. This is in JAMA.

Q This is dated February 15th, 1964?

A Right, under their news section in JAMA. It says that the study will be devoted -- "devoted primarily to determining which significant human ailments may be caused or aggravated by smoking," comma, "how they may be caused," comma, "the particular element or elements in smoke that may be the causal or aggravating agent and methods for eliminating of" -- "the elimination of such

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

agent." And the criticism by Dr. James Mold, by Dr. Helmut Wakeham and some of the others who actually put together a collaborative report on the AMA-ERF project was that the research was not aimed in that direction. Nicotine is only one component found in cigarette smoke. Why in the hell were they spending two-thirds of their money on studying one element of cigarette smoke, something that the research directors of the companies that attended these meetings said had already been studied enough?

Q Well, don't you believe that the knowledge in the scientific community in this country regarding nicotine and its effects on the human body has evolved since 1964?

A And I'm saying I think that the science that they funded, the project that they funded, including the two-thirds of the money they funded that went toward nicotine, studies on nicotine, was important. I'm not saying it wasn't important, I'm not saying it's irrelevant. I'm saying it didn't meet -- it didn't meet what their stated goals and objectives of that project were.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Document hosted at www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Are you saying that it didn't meet any of the goals stated, or it didn't meet all of the goals stated?
A You know, Dr. James Mold said it best. He said money is wasted. I mean, it's being wasted.
Q Wasn't there a point in time when scientists in this country believed that, to the extent cigarette smoking might cause cardiovascular disease, that nicotine may be a component in that causation? Is that right?
A That's correct.
Q And people believed that in 1964, that that was a possibility, correct?
A That's correct.
Q So, looking back at the goals that you've just read for the AMA-ERF program, it says that devoted primarily to determining which significant human ailments may be caused or aggravated by smoking. Wouldn't a study of nicotine be relevant to that?
A Yeah, I just said nicotine is one component, one of how many? 4,000, 3,000? How many components are found in cigarette smoke?
Q So, what you're saying, if I've got it right

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Digitized by the Internet Archive www.industrydocuments.ucsf.edu/docs/fsjl0001

-- you tell me -- you're not saying that the study of nicotine was irrelevant?

A That's correct.

Q You're just saying that it's not everything, it's not the whole story, is that right?

A That's correct.

Q But it is a fact, isn't it, that when you're funding studies, you need somebody to propose a study? Isn't that right?

A Sure.

Q Let's get back to where we were. The question was the false statements emanating from the public relation collaboration, and I asked you what other false statements there were, and you talked about the lack of independence. Are there any other false statements that these documents show resulted as a result of collaboration from AMA and the tobacco industry, besides whether or not the AMA-ERF was independent?

MR. HOAG: And these documents are just the ones you've identified for this particular area of questioning?

MR. McCONNELL: That's right.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Document from www.industrydocuments.ucsf.edu/docs/fsjl0001

MR. HOAG: That's correct.
MR. McCONNELL: Correct.
A Just these documents?
Q (By Mr. McConnell) That's right.
A (Referring to documents.) Well, I mentioned an earlier example, and I'm going to bring it up again. I think I mentioned it. There was a publication that's not included in this stack that you gave me, and that's called "The Cigarette Controversy." It's published by the Tobacco Institute. That's not in this stack that I have here, but there is an August 28th, 1968 memo that's Plaintiff's Exhibit No. 4080, where the cover letter is providing information from Dr. Ira Singer, who was the Secretary of the AMA-ERF, to the Vice-President of Public Relations at the Tobacco Institute, Bill Kloepfer -- K-l-o-e-p-f-e-r -- in order to add information to that publication. In that, it says that -- the statement is made, which is actually included in the final version of the publication by the Tobacco Institute called "The Cigarette Controversy," "The American Medical

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Association, both a close observer of and participant in the cigarette." I think that's a false statement right there, that they participated in the cigarette? Does that mean that they, what, helped make cigarettes? Helped found -- form cigarettes, helped change cigarettes? What does that mean? I think it's a false statement.

Q Are there any others?

A (Referring to documents.) I think that Exhibit No. 0259.

Q What's the date on that?

A That's June 24th, 1974. That's a memo from Alexander Spears to Mr. Judge at Lorillard.

Q What's the false statement in that document?

A Well, the false statement was made previously that -- first of all, they're discussing industry-funded smoking and health research projects, and certainly the AMA-ERF committee would fall under that category. They have stated prior to this memo publicly that those projects that were funded by the industry were on the up-and-up and -- I'm sorry, I didn't mean to do that.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

(Interruption.)

A Stated that those projects were -- had the goals of really finding out what the problem, the real problem of the smoking and health issue was, or is, or whatever it was at that time. And Mr. Spears is discussing those various projects, saying that they were not selected for any scientific goals, but rather for purposes such as public regulations, political relations, position for litigation, et cetera.

So, I think that this memo here really negates much of what the industry funded in terms of being anything that they said in press releases, in their brochures published by the Tobacco Institute about such research, that any of those were true.

Q Now, in this memo that you just referenced, does he discuss the AMA-ERF at all?

A It's redacted. It's No. 6, which is redacted. The information is not printed on the first page.

Q Do you know what it says?

A No, but somebody at the industry does, and that's why it's redacted.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Document Archive. www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Have you ever seen what it was that was redacted?
A No, but I'll be willing to bet my life's entire income that No. 6 is AMA-ERF project. It's got every other special project, including the Council for Tobacco Research, the Tobacco Research Council in the United Kingdom, Harvard project, Washington University, UCLA. Three of the most important projects. University of Kentucky. It's got every single project in here, major project that they funded, with the exception of the one, the largest project that the industry funded and the largest scientific research project that they funded was the $18 million that they gave to the AMA-ERF.
Q Well, looking at the date of June 24th, 1974, at that point in time was the industry stilt actively funding AMA-ERF?
A No, they were not, but it says -- you've got to read the document. It says historically the joint industry-funded smoking and health research programs. Whether it mentions the AMA or not is irrelevant, because he says the joint industry-funded smoking and health

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

research programs. He doesn't say except for the AMA-ERF. He doesn't exclude that from his statement. He goes on to say are selected specifically for purposes of public relations, political relations and positions for litigation. If he didn't mean to include the AMA-ERF, he should have indicated so, and he did not.

Q Well, they're not included in the list that he gave at the front, correct?

A Where is No. 6?

Q You're just guessing that No. 6 is AMA-ERF?

A I'm betting my entire life's income that No. 6 is the AMA.

Q Before you lay that bet down, let me draw your attention to the second sentence of the first paragraph. It says, "Perhaps the simplest way to review the subject is to list the organizations and/or category of organization and general areas of research which they are pursuing." Now, looking at that sentence, do you still want to make that bet?

A Maybe, maybe not. I would go back to the statement that I made. The statement that's

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

included in this -- in this document speaks of historically. He uses the word historically. That means what, everything they may have funded? Maybe it doesn't, but he doesn't exempt the AMA-ERF program from that statement.

Q I noticed before I asked you a question about false statements coming out of the AMA-ERF, and you corrected me and said you're just not talking about public relations. Now, if I broaden that, if I just ask you what falsehoods were issued to the public as a result of the AMA-ERF, not limiting to public relations, are there others that you can think of as you sit here today?

A I think the ones that we've covered, including -- and I mentioned earlier the True magazine article, I think you included that in this.

Q Yeah, I think that's in there. That's 4089. You've discussed that, the True magazine article.

A Yeah, I've already discussed that. What's not included in the packet here is some of

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Browse this new web site at www.industrydocuments.ucsf.edu/docs/fsjl0001

the information that goes along with that article. Where did I put it? Namely the information from the Tiderock Corporation, the PR firm that handled the mailing to the physicians in this country, as well as other people, and the information about the FTC investigation into who actually wrote the article for the industry and the Wall Street Journal article that first published that information.

Q Aside from what you've already discussed, are there any other falsehoods that were issued to the American public as a result of the AMA-ERF?

A I think the ones I've pointed out are very significant, even just from this amount of documents here. Let me just make a comment here. One falsehood was the amount of money that was touted by the tobacco industry and by the AMA-ERF, for that matter, the amount of funding for this project. And they said $18 million in news releases and so on and so forth, when, in fact, it wasn't $18 million that was received. As we know, it came down to the end of the project, and

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

they actually ended it a little bit early, before some of the arrears, the money that was still owed to the AMA-ERF was given to them. The AMA-ERF said, you know, "This is not a good project for us, this has further blackened our image, we want out of this," and they also had money in their accounts already, I think it was about $1.3 million, that had not been spent on research, and they asked the industry what -- you know, if they could use that for -- to fund minority medical student, to help for their school activities in grants. And according to the memos you've given me here, in 1972, when they finally came to an agreement on how to end this project, the chairman of RJ Reynolds, Mr. Galloway, said that that would be fine, and they agreed on the amount of money.

So, technically all of that money wasn't even used for research, even the amount of money that they did receive. It was about $15 million or roughly in that area. Some of that was not used for research, it was used for something else.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Are there any other falsehoods issued to the American public as a result of the AMA-ERF program?

MR. HOAG: Is your question still limited to the documents you showed him?

MR. McCONNELL: I want to exhaust these documents. When he says no more, then we'll ask what about other documents.

MR. HOAG: All right.

A It was never -- it was never actually -- well, let me think about how I want to word this. (Referring to documents.) I can't piece it all together with the documents you've given me here.

Q You have other documents with you here today, is that right?

A Yeah, other documents actually that you have -- should have as well.

Q Could be. Would it help you to go through those documents to provide a more complete answer in terms of what falsehoods you know were issued to the American public as a result of AMA-ERF?

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

A It may.
Q All right. Why don't we -- we'll take a break and do that, but what I'd like to do -- a lunch break ought to be coming up. I want to fire through some other questions I hope I can get through quickly to get through some of this outline and move this thing along, and then we'll take an extended break, if that works for you, so you can look through those documents. Is that all right?
A That's fine.
Q All right. See if I can get through some of this stuff.
A I don't need a lot of time.
Q Okay. What is the AMA?
A The American Medical Association.
Q Which is what?
A Which is the country's largest organized medical society.
Q Made up of doctors, for the most part, is that right?
A Yeah, membership constituted by doctors.
Q When was the AMA formed?
A That's a good question. 18-something. I

http://legacy.library.ucsf.edu/tid/sur07a00/pdf
Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

think around the mid-1800s.
Q Formed before the Civil War?
A I don't know when the Civil War was. I don't remember.
Q You really aren't a historian.
A I'm not a Civil War historian.
Q Have you ever looked at the charter of the AMA?
A Yes. I've read bits and pieces of it, yes.
Q Have you ever read the AMA's mission statement?
A Yes, I have read it.
Q What is the self-described purpose of the AMA?
A The self-described purpose?
Q Correct.
A Well, off the top of my head, I can't give it to you, but I actually have it sitting right behind me in a book. I've read it several times.
Q How is the AMA governed?
A By a House of Delegates and a Board of Trustees.
Q And how many members are on the Board of Trustees?

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

A That's a good question. I believe -- I don't recall. I believe it's 16.
Q How is the leadership of the AMA selected?
A They run for a position as a delegate. You must be a delegate to the AMA. It's a so-called democratic organization.
Q Well, that leads me to my next question. Who votes for the leadership of the AMA?
A The delegates do.
Q Who are the delegates?
A Delegates are representatives from their own states, their own state medical societies, and I should say and other medical societies. The Society for Preventive Medicine, for example, I gave an earlier example.
Q How does somebody get to be a delegate?
A You get in the circles within your own local and state medical society, and you run for an office in that area.
Q You get elected by the local doctors; is that right?
A Not the local doctors. I believe you are elected by those who are already members of -- they are already delegates to either a

http://legacy.library.ucsf.edu/tid/xur07a00/pdf
Support provided by www.industrydocuments.ucsf.edu/docs/fsjl0001

local, state or national.
Q Who is the current head of the AMA?
A Are you talking about the president?
Q Okay. Who is the current president of the AMA?
A I don't know, because it just changed last year over the Sunbeam debacle. So, I don't recall at the moment.
Q Who was the president of the AMA in January of 1964?
A January of '64 would be Dr. Blasingame.
Q Are you sure he was the president in January of '64?
A I'm sorry, the president? Can I refer back to these documents again?
Q Of course.
A (Referring to documents.) I don't remember is probably the easiest way to answer that if I'm looking this long.
Q Does the AMA have a budget?
A Yes, they do.
Q What was the size of the AMA's budget in 1964, if you know?
A I don't remember. I know that I've read -- I've looked at that. I don't remember off

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

the top of my head.
Q Do you know what the current --
A It's in the millions, yeah. The current size is roughly around 200 and -- well, I don't know. It depends from year to year on, you know, what they're planning with the various companies, but between 220 and 260 million dollars a year.
Q What are the sources of funding for the AMA budget?
A Membership is one, obviously. I don't believe that's the largest source of income. I believe that advertising in its journals is the largest source of income for the AMA, but then there are huge sponsored -- I mean, if you've ever been to one of their annual second conventions and seen the size of the pharmaceutical exhibits which they charge literally $100,000 just for the one exhibit space, that's a major source of revenue for them. And then special projects is also a major source of revenue for them.
Q The AMA lobbies the federal government, is that correct?
A That's correct.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Support provided by the UCSF Library
http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Do you know what the lobby budget of the AMA is?
A I've read about it. I can't tell you off the top of my head.
Q Is it in the millions?
A It's in the millions, oh, yeah.
Q The AMA is also consulted through governmental agencies for certain things, for example, such as appointment of the Surgeon General; is that true?
A Have they lobbied for appointment of a Surgeon General?
Q Do they ever make recommendations?
A Yes, they have in the past made recommendations for surgeon general candidates.
Q Do you know in the 19th century what was the position of the AMA regarding tobacco?
A I don't know that they had an official position as an organization.
Q Same question with --
A I take that back. They had -- it was -- I don't remember.
Q How about in the first half of the century, prior to 1952, '53, '54?

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Support provided by the industrydocuments.ucsf.edu/docs/fsjl0001

A Right.
Q What would you say was the position of the AMA with respect to "Tobacco and Health"?
A I think the primary position that they had prior to the time period you just were describing and, you know, the 19 -- I think later 1950s when they may have changed it was that smoking was to be discouraged among youth. That was their primary and possibly their only real position on it.
Q Now, from the early Fifties up through let's say 1959, is it fair to say that the AMA's position on tobacco and health was that it had an open mind?
A That the AMA's position?
Q The AMA thought that there was a relationship, but there was not yet enough evidence to warrant the assumption that cigarette smoking caused cancer?
A Well, they never had a position that -- I mean, prior to that time that made that kind of a statement.
Q Do you know what the position of the AMA was, the publicly-articulated position of the AMA was in 1959, regarding the

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Browse this new web at www.industrydocuments.ucsf.edu/docs/fsjl0001

relationship between cigarette smoking and cancer?

A Yeah. There was an article published after Luther Terry and Leroy Burney had published their articles. They made a statement.

Q And who was Leroy Burney?

A Leroy Burney was Surgeon General prior to Mr. Terry, Luther Terry.

Q Burney was the Surgeon General in 1959, correct?

A Correct.

Q Do you know whether or not the AMA --

A Wait, '59?

Q Yeah.

A I believe he was in '59, because his article appeared in '57.

Q Do you know whether or not in 1959 the AMA disagreed with Burney's conclusions regarding the relationship between cigarette smoking and health?

A In 1959?

Q Correct.

A Whether their position disagreed with --

Q Burney?

A I know that they changed their position

http://legacy.library.ucsf.edu/tid/nur07a00/pdf
Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

somewhat roughly about that time. Again, I'd have to reread that, the article that he wrote and the editorial that they responded with.

Q Do you know what the position of the AMA was in 1963 regarding cigarette smoking and health?

A Well, you've made a big jump. You got to look at 19 -- I mean, they investigated this and were encouraged to investigate this by a number of people. In 1960, the AMA Council on Drugs was authorized to look into the tobacco issue. They started doing that, but then they stopped doing that for whatever reason, and then in 1961 a Senator Maureen Neuberger encouraged the AMA -- actually, a little more than encouraged, she almost insisted that the AMA get involved in this issue, because it was becoming a major issue in Congress, and they declined to get involved even at that time.

But again, if you go back to these memos, it would indicate one possible reason that they declined to do so was that the tobacco industry was looking for a way to

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

work with the industry as early as 1959, and perhaps earlier than that.

Q And there's a document, in fact, Plaintiff's Exhibit 5493 dated September 3rd, 1959, it's a letter from Clarence Cook Little to Bowman Gray at RJR, correct?

A Correct.

Q Where Clarence Cook Little says that it is high time that the American Medical Association I guess get involved, is that fair? I mean, you look at the letter, you tell me.

A Yeah. I mean, it looks as if the -- this memo states that the tobacco industry has been looking for a way to work with the AMA in some capacity on the tobacco issue.

Q All right. Did anything come of this letter?

A I don't know. I guess you'd have to look at the activity of the AMA. You know, since they didn't get involved at their membership's urging, their council on drugs, senators in United States Congress, you know, one would question what did happen as a result of this investigation. Did they

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

start working? My feeling is this, and if you look at the time frames on the documents themselves, not just these documents but public reports about the AMA-ERF and the tobacco industry's involvement together, what you find is that in June of 1963, that's their annual meeting, the AMA's annual meeting. In June of 1963, you had resolutions that were introduced in asking them, the AMA, to adopt formal positions on cigarette smoking and tobacco use, and they said that it was not appropriate to do that until the Surgeon General's report came out. Of course, they knew it was being worked on at that time.

But then in December of 1963 -- they said it was not appropriate to do anything until after the Surgeon General's report came out, but in December of 1963, at the mid-year scientific meeting, the House of Delegates authorized -- actually it was brought to their attention from one of the reference committees, but then authorized a study using $500,000 of their own money that was approved to then have the AMA-ERF

http://legacy.library.ucsf.edu/tid/xur07a00/pdf Document hosted at www.industrydocuments.ucsf.edu/docs/fsjl0001

conduct a study or an investigation into smoking. They didn't state their goals and objectives. They just said to conduct a study into smoking. And then -- so, that was before the Surgeon General's report was released. Now, one question is why in six months period of time would they dramatically change their mind to go from taking no formal position until the Surgeon General's report comes out, to contributing $500,000 of their own money. The AMA-ERF, by the way, did not have all of that money. A lot of that came from the medical auxiliary, who -- you know, this is the wives of the physicians who run around trying to raise money. That's a huge chunk of change for the auxiliary to try to have to, you know, match up to. But then to do that right before the Surgeon General's report came out, really about a month, and then to have the Surgeon General's report released in January, and just a couple of weeks later making formal statements to the Federal Trade Commission without having their House of Delegates even being a part

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Document hosted at www.industrydocuments.ucsf.edu/docs/fsjl0001

of that, to signing a five-year $10 million agreement with tobacco companies. I think that you have to understand from those time frames that the AMA-ERF and the tobacco industry were talking long before February of 1964, when they announced their so-called joint program.

Q Let me see if we can break that down. First, I want to go to the first point in the chronology you mentioned, which was June, 1963, the AMA says, "We're not going to get involved."

A Well, that was the third time they said they're not getting involved. '60, '61 and '63.

Q Looking at all three of those, do you have any evidence that the AMA's refusal to get involved was the result in any way of anything that the tobacco industry said or did?

A Do I have any evidence to that?

Q Right.

A I can only state that as early as 1959, the industry was looking for a way to work with the -- with the AMA, and I think that

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

strongly suggests that there was some influence on the leadership of the AMA. If there was something going on -- you brought up the date June of 1963. If the tobacco companies came to you as the President or the Executive Vice-President of the AMA and said, "We've been talking about this amongst ourselves, but until this date we haven't said anything to you, but we have $10 million," I mean, how long does it take to transfer $10 million from tobacco companies and for the AMA-ERF to make an agreement to do that? House of Delegates never agreed to accept the tobacco industry money. They only agreed to take $500,000 of their own money and apply it to studying smoking. That's all that they did.

In fact, in 1964, at their annual meeting, 12 of the 72 resolutions that were introduced at the AMA annual meeting in June of 1964 specifically sought to endorse the Surgeon General's report. None of those passed. One resolution that was introduced by delegates from California said, "We don't want to take the tobacco company money

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Browse this new web at www.industrydocuments.ucsf.edu/docs/fsjl0001

because we feel it taints our image, it's not ethical, it's not right." Didn't go anywhere. But it shows you that it's not the delegates who run the AMA. It's not the members of the AMA who run the AMA. It is the leadership who runs the AMA. It's the same thing as you and I get to vote for President Clinton or whoever else is President of the United States. We don't get to run the country, he does. It's a democratic society, the guy gets voted in, but he does what he wants. And people with the most power at the AMA are the editor of JAMA -- it used to be Morris Fishbein, but he had so much power they kicked him out in 1949, and rightfully so. I mean, not kicked him out, but he had a lot of power, he brought in the most money to the AMA through the advertising in journals. You're looking at the Executive Vice-President of the AMA with power. The president is meaningless. The president is stooge for a year, that's it.

So, I think, you know, having what I just said, you've got to put all of this

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Browse this new web at www.industrydocuments.ucsf.edu/docs/fsjl0001

into, you know, the context of how deals are done. You can't -- you can't try to say that, you know, that happened then and that maybe that never came up again, simply because you don't have a document before me that discusses it.

Q Let me follow up. You say that you know that in 1959 the industry was looking for a way to work with the AMA. We've got that document in front of you. That's a letter from Clarence Cook Little of CTR?

A That's right.

Q To Bowman Gray at RJR, correct?

A Correct.

Q Do you have a letter from the tobacco industry to the AMA?

A That's what I just said. Because there isn't a document sitting here before me at this very moment doesn't mean that this was the only letter written. Clarence Cook Little was employed by the Council for Tobacco Research. He was their scientific director. For God's sake, that's all of the companies that are paying money in to pay his salary. You don't think -- you don't

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Browse this item at http://www.industrydocuments.ucsf.edu/docs/fsjl0001

think -- you think that Clarence Cook Little only wrote letters to Bowman Gray at RJ reynolds and never told anything to Philip Morris, Lorillard -- actually Lorillard, but Liggett, American Tobacco, the rest of the companies, that he didn't discuss any of these things with them, only with the person at RJ Reynolds Tobacco Company?

Q Do you know whether or not there was a letter sent in 1959 from anybody in the tobacco industry, including CTR, to the AMA? I'm not asking you whether it's in front of you. Do you know whether such a letter exists?

A I haven't -- I have no idea if that letter exists. And I will point -- I will point very clearly to a very important person the American Medical Association in a deposition in a separate case who said that the AMA destroyed these documents. He was asked very, very specifically to provide all of the documents that he could provide on this relationship. Amazing, none were found. So, I've got to give credit to the industry for saving the documents. The only reason I

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

think they're saving them is because they think that this is going to help them, you know, in their defense. They can always point to the AMA. They can always say, "Aha, the AMA said that warning labels weren't needed in 1964 because the health hazards of excessive smoking have been well publicized for more than 10 years and are common knowledge."

Now, why would the AMA write this 15 days or whatever after signing an agreement with six tobacco companies for $10 million, even though they just said in December of 1963, two and a half months earlier, that more research was needed, that the risks aren't commonly known? I think -- I think you've got to put all of these into context, and rather than taking them out piece by piece or asking me if something exists that I may or may not know about.

Q What evidence --

A It's the behavior of -- it's the behavior of both the AMA -- I'm not saying the AMA was duped by the tobacco industry. There's no way in hell I would ever say that they were

http://legacy.library.ucsf.edu/tid/xur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

duped. They went along with this willfully, knowingly, exactly knowing what they were getting themselves into.

Q Referring to the letter that you just referenced, the letter from the AMA to the FTC, where the AMA took the position that labeling wasn't required because it was common knowledge among the public that cigarettes were dangerous --

A Correct.

Q -- do you know that that was a lie, that that was a statement that the author did not honestly believe? Putting aside whether you disagree with the substance of the statement, do you know whether, when he wrote that statement, he was saying something he didn't really believe?

A Well, this is signed -- presumably, this is his signature, and there's some question as to whether or not that is his signature in Howard -- in Dr. Ernest B. Howard's deposition, which is one of the other documents that I gave you. So, technically, I think that in less than three month's time, Dr. Blasingame, who was the Executive

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Vice-President of the AMA, changed his mind dramatically. He went from saying in December of 1963 that more research was needed, and that's why we're going to put $500,000 of our own money into studying smoking, and then less than three months later he's saying to the Federal Trade Commission, "With respect to cigarettes, cautionary labeling cannot be anticipated to serve the public interest with any particular degree of success. The health hazards of excessive smoking have been well publicized for 10 years and are common knowledge."

Q. You're saying that that's a contradiction?

A. That's a contradiction, sure.

Q. Well, let's work it out for a minute, because you've got another document there in front of you. It's the AMA news?

A. Uh-huh.

Q. That's Plaintiff's Exhibit 5494, and what it says is that the study will be devoted primarily -- this is referring to the AMA-ERF study -- to determining which significant human ailments may be caused or

http://legacy.library.ucsf.edu/tid/xur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

aggravated by smoking, how they may be caused, the particular element or elements in smoke that may be the causal or aggravating agent, and methods for the elimination of such agent. Are you saying that that is contradictory with saying that just generally the health hazards of smoking have been well publicized for more than ten yeas and are common knowledge? They're two different things, aren't they?

A Again -- no. Again, you've got to go back to 1963 annual meeting and the mid-year meeting. They would not make -- they would not take a stand on the smoking and health issue because they said the Surgeon General's report hadn't come out. Why then, without the approval House of Delegates of the AMA, is he making this statement on behalf of the AMA? That's the question.

Q Right. You asked the question?

A Right.

Q My question is --

A No, let me give you my answer.

Q That's what I want, your answer.

MR. HOAG: Just for the record,

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Support provided by the UCSF Library www.industrydocuments.ucsf.edu/docs/fsjl0001

the document he just referred to was Document 5488 where the statement is contained.

A My answer to the question is that money is louder than words, that $10 million coming in -- as the Executive Vice-President of a organization, and I don't care if their annual budget was $300 million, which it wasn't at that time, it was probably about 175 million, maybe 150 million. $10 million is a lot of money for your organization. I would certainly take $10 million.

Q And there is no $10 million in June of 1963 when the AMA said, "We're not going to take a position," correct?

A That's correct.

Q So, at the time at least when the AMA is taking the position --

A But we don't know -- I don't know if that hadn't already been discussed at least as early as 1959.

Q Do you know whether or not the AMA's position in June of '63 and even earlier, as you mentioned before, was in any way affected by the tobacco industry? Do you

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

know? Forget about speculation. Do you know, as a historian, as an expert, as an kinesiologist? You tell me, do you know?

A I do not have evidence to suggest what you've stated.

Q Now, do you know when the AMA made its change of mind in December of --

A I do -- back up. I do know that when requests have been made to the American Medical Association for documents regarding the relationship between the AMA and the tobacco industry, that they could not be produced because they were destroyed, and I think that's a very significant piece of information in the puzzle.

Q Before we break for lunch, I just want to hit this area of the AMA's position on cigarette labeling and the accusation was made by Congressman Frank Thompson?

A Thompson.

Q It's listed in one of these documents, that the AMA was siding with the tobacco industry as a quid pro quo to get tobacco state congressmen to help fend off socialized medicine, correct?

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Browse this new web site at www.industrydocuments.ucsf.edu/docs/fsjl0001

A That's correct.
Q Is that part of the opinion that you're going to articulate to the jury?
A Most definitely, because Ernest Howard, in another document which is somewhere in the pile here, I believe, made those exact statements about the reasons for discontinuing -- let me just find it here. The reasons he wanted to be very careful in how the project was discontinued. See, it was discontinued by the AMA-ERF, or by the AMA. It was not discontinued by the industry, and I think that speaks to some of the problems with the project. This is Exhibit 4085.
Q Got it.
A Well, there's a document that's missing from this package. It's a document that very clearly states that the reason for Dr. Ernest Howard, who at the time in 1972 was Executive Vice-President of the AMA, he states that the AMA doesn't wish to further blacken their image, and he wants to be very careful in how the conclusion of the project is handled because he doesn't want to get on

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

the bad side -- I don't remember what words were used -- with tobacco state congressmen.

Q And that's a statement that Dr. Howard wrote in 1972, correct?

A It was '71 or '72. I believe it might have been '71. Actually, I don't remember. It's not here in front of me. I'm going to guess it was in '72, but it -- I don't know.

Q Now, beyond that, what evidence do you have that the AMA's labeling position in 1964 was part of a quid pro quo with tobacco state congressmen?

A I need that document in order to answer that question, because that documents talks a great deal about the entire relationship of the AMA-ERF and the tobacco industry.

Q During the break, let's find that.

A Yeah.

Q I think I have seen the document you're talking about, I know what you're talking about, so let's get that. But beyond that, what evidence do you have to support Congressman Thompson's charge in 1964, which, as you know, the AMA vehemently denied, correct?

http://legacy.library.ucsf.edu/tid/xur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

A Oh, most certainly they did.
Q What evidence do you have that Congressman Thompson's accusation was correct?
A I think he looked at the evidence, as a number of people would. He probably didn't have this kind of detailed information to look at. He was simply looking at the $10 million that was given three weeks before this statement was made, not by the House of Delegates, but by one person, you know, the man in power at the AMA. And so I think that he based his conclusion on far less evidence.
Q Do you know what evidence there is besides his bald accusation that supports his charge?
A We're looking at it. We're looking at documents that for 15, 14 years the AMA did not change its position on smoking and health. Between 1964 and 1978, they were literally silent on the No. 1 important public health issue facing this country. They did absolutely nothing.
Now, if you look -- and you have -- you can't take that out of context. You have to

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Browse this page at www.industrydocuments.ucsf.edu/docs/fsjl0001

look at what they're doing today, which is administering grants -- this is the most ironic thing of all. First, they take $10 million from the tobacco industry in 1964. Now they take $10 million from RJ Reynolds in 1996 to administer, you know, one of the biggest tobacco control programs in the country. How did they get from Point A to Point B? But you have to look, because they didn't do anything between 1964 and 1978 that would indicate any kind of a, quote, tobacco control stance.

Q My question is what --

A Despite the delegates introducing such resolutions annually and at their mid-year meeting.

Q What evidence do you have that the AMA's silence or the AMA's position on labeling was based on a desire to curry favor with tobacco state congressmen during this period, 1964, in order to prevent -- let's see what he says -- to stave off the King Anderson bill for hospital care for the aging under Social Security? What evidence supports that accusation?

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Digitized by Arcadia www.industrydocuments.ucsf.edu/docs/fsjl0001

A I'm going to -- I would refer to a couple of books, and I can do that during the break.
Q Okay. Do you know who Frank Thompson is?
A Sure, yeah.
Q A congressman, correct?
A Correct, yeah. Representative, House of Representative.
Q Whatever happened to him, do you know?
A I don't recall.
Q Do you know how he left office?
A I don't recall, no.
Q Do you have any opinion about his integrity?
A I don't -- I didn't follow his career.
Q Would that be germane to your opinion at all in terms of evaluating his accusation, his own integrity?
A Yes, it may.
Q So, would it affect your opinion at all to learn that he was -- ?
A It would affect my opinion about him and the statements he made, surely it would.
Q Would it affect your opinion if you knew that Congressman Thompson was indicted under the Abscam prosecution?
A Would that what?

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Would that affect your opinion in terms of the veracity of his allegations as to the quid pro quo in 1964?
A Not -- this is the first time you said specifically to those statements about this, and I'm saying I'm making those statements now based on the information that I have and the information and the research that I've done. I'm saying that his was maybe pulled out of his pocket in the middle of a hearing, or whatever.
Q But you're going to try to get the stuff during the break that shows that it's not just out of your pocket, that there are some documents, right?
A We've already looked at all of it.
MR. HOAG: I object, mischaracterizes his prior testimony. Wait. I'm just objecting to his question, mischaracterizes the prior the testimony. You can answer, go ahead.
A We've looked at a great deal of information that -- in fact, you'd have to be pretty naive to suggest that the detailed

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Support https://www.industrydocuments.ucsf.edu/docs/fsjl0001

information between the AMA and the industry in the documents, the amount of contradiction of the AMA itself, both before and after the money arrived, you'd have to be pretty naive to think that there was no influence of that money on the agency itself.

Q (By Mr. McConnell) So, your opinion basically is that in 1964, the AMA sold the health of the American public down the river in order to get the opportunity to administer -- not receive $10 million, but administer $10 million of grants?

A Wait a minute. How much money did they get to administer that project? That was part of their budget. So, you're wrong. They did get money to do this.

Q How much?

A I don't know. I'd have to take a look at the -- I've looked at some of the financial information, but not all of it.

Q The fact remains that, whatever amount of money it is, your position is that AMA lied and sold the health of the American public down the river in 1964?

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

A Yeah, basically that's correct.
MR. McCONNELL: Why don't we take a lunch break? Let's go off the record.
(A lunch break was taken.)
Q (By Mr. McConnell) Mr. Solberg, did you have a nice lunch?
A Yes.
Q And as part of that wonderful lunch, did you have the opportunity to review illuminating and fascinating tobacco documents?
A Just the three that I was thinking about when we broke.
Q Okay. And are these documents that contain additional material that you'd like to use to amplify your responses of the morning?
A Yes.
Q Why don't you tell us what the documents are and what your amplifications are?
A You want exhibit numbers?
Q Yeah, that would be great.
A 208.
Q That's Plaintiff's Exhibit 208?
A Yes. Plaintiff's Exhibit 4083. That's really it. The other one is really just a

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

cover letter to the other one, so I don't think we need it. It was Plaintiff's Exhibit 1824.

MR. HOAG: All three of those have previously been provided to defense counsel.

Q (By Mr. McConnell) Why don't you tell us what 208 and 4083 are.

A No. 208 is a memo from Bill Kloepfer to Horace Kornegay, both of the Tobacco Institute, dated September 3rd, 1971, and that was the one that I was looking for in that other stack of memos and letters that I don't think was in there.

Q You keep talking -- I actually thought I had put it in there, but I'll check.

A I didn't see it in my stack, but I may have overlooked it. In any event --

Q Yeah, it's there.

A Okay. In any event, the reason I wanted to make reference to it was we were talking about Dr. Ernest Howard, who was the Executive Vice-President of the AMA at the time the memo was written here, and they were discussing ways -- there were several

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Browse this page at www.industrydocuments.ucsf.edu/docs/fsjl0001

people from the industry meeting with -- well, not several. There was a few people from the tobacco industry meeting with a couple of people from the AMA, including Dr. Howard and Dr. Frank Campion, whose name was mentioned earlier this morning as the person who wrote the history of the AMA, one of them anyway, looking at ways to end the relationship with the tobacco industry. And it was on page 2 of the memo that I was referring to, where Dr. Howard said that he regrets the program as a great liability, that from the AMA's view, it has only caused further blackening of AMA's image. He said from the industry's standpoint, the research as produced no evidence to clear cigarettes from the generally-accepted conclusion that they cause lung carcinoma and other maladies. He said he thought the latter point would be widely reported as the reason the industry decided to terminate the program, regardless of what is said by either party about it. And Howard goes on to make six points, I think only really the first two that are really important: No. 1,

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Browse this new web at www.industrydocuments.ucsf.edu/docs/fsjl0001

he is most anxious to avoid any incident which will create displeasure with AMA among tobacco area congressmen. He said AMA needs their support urgently. No. 2, he was told that 85 percent of the ERF research with tobacco funds has been, quote, useful, basic research, unquote, but that, through neglect by all concerned, no effort has been made to impress anyone in or out of AMA with this. That was in reference to the discussion we were having about whether or not the AMA-ERF project was, No. 1, seeking to fulfill its goals and objectives as stated in 1964; and, No. 2, to point to the motivations on the part of the AMA at least for discontinuing their relationship with the tobacco industry.

Q Do you accept what is said in this memo at face value, or do you --

A I've heard Dr. Howard's deposition before his death, I think he died shortly thereafter, but in any event, I've read his deposition, and apparently he has some agreement with it.

Q Is it part of your opinion at all that

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

there's anything in this document that is false?

A There was some confusion about whether or not the AMA-ERF did any other research other than that that was funded by tobacco companies, and even Dr. Howard was somewhat clueless on that point, because at one point he said that they didn't have any, and at another point saying that, yes, in fact, he changed his mind, they did have other research projects. And, in fact, they did have other research projects that were not conducted by the ERF of the AMA, but that were funded by another fund. And that gets to the next memo that I had mentioned. The AMA had something called the Biomedical Research Institute, and the director of that institute was Dr. Roy Ritts. Dr. Roy Ritts was brought in to run that institute in 1963, and it was in November of 1963 he was asked, as part of his responsibilities of the Biomedical Research Institute, to run the tobacco-funded project, which he denied, he would have no part of doing. And so it sort of created a problem within the AMA,

http://legacy.library.ucsf.edu/tid/nur07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

they had to change things around. But in any event, the Biomedical Research Institute at the AMA did conduct additional research that was funded by the AMA-ERF.

Q Are you referring to Document 4083 for those statements?

A Yes, I am.

Q What is that document?

A This is a memorandum dated May 28th, 1971 from Bill Kloepfer to Horace Kornegay, Tobacco Institute.

Q If you'll check, I think that was also in your original collection of materials that I gave you.

A I may have overlooked that one.

Q So, let me just make sure I understand this. You're relying on this document for what aspect of your opinion?

A The fact that the AMA had additional research efforts ongoing at the time that this project was going to be concluded. Well, wait a minute. Now, wait a minute. What I'm -- what I want to say is that the AMA had other research efforts besides tobacco research that was funded by the

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

AMA-ERF between 1963 and 1970.
Q Did the AMA-ERF exist before this agreement with the tobacco industry in 1964?
A Yes. Yes, it did.
Q Okay. What kinds of activities did it undertake, if you know?
A Well, they provided funding to some of their own research in their own laboratories. At one point, they had their own laboratory. They didn't, at the time of the AMA-ERF project that was funded by the tobacco industry, have their own lab. They had something called the Biomedical Research Institute that did do some types of laboratory experiments, but it wasn't the kind of lab that they had in the 1940s and 1950s that Dr. Wolman ran. It was something different. It was under a different heading. It was called something different.
Q Looking at Exhibit 4083, the first page, there's a Paragraph 3. It says, "In the last cumulative note which we appear to have, JAMA disclosed on June 1, 1970 that approximately $11 million of the funds pledged by member firms of the tobacco

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Document hosted at www.industrydocuments.ucsf.edu/docs/fsjl0001

industry have been awarded to 155 individual research projects at 60 universities and institutions with 260 resulting published reports in scientific journals and periodicals. Do you see that?

A I see that, yeah.

Q Do you have an opinion as to whether or not that's a true or false statement?

A I think we'd have to compare it with the "Tobacco and Health" report to find out exactly whether or not it was true. I don't know that you can determine that, because I don't know that there are necessarily dates on each of those projects. There may be, but I don't believe that there are in that final report.

So, I mean, it sounds fairly accurate to me that by that time, on June 1st of 1970, about a million dollars of the funds had been pledged. That sounds about right. Remember that --

Q 11 million.

A Yeah. That's what I said, didn't I?

Q I thought you said one million.

MR. HOAG: You said one million.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

A 11 million, I'm sorry. That sounds about right to me. If you look at the very first -- what was it, the first two years of the project, or the first year of the project I believe it was, $3.6 million had been pledged within the first year. So, that would -- that sounds about right to me.

Q (By Mr. McConnell) If you look at the second page of this document, the paragraph at the top begins, "He also referred to House adoption in December, 1963, of a report from the Board of Trustees endorsing tobacco and health research by the AMA-ERF." Quote, "It was emphasized that this program would be separate from the research contemplated in the AMA Biomedical Research Institute. As for tobacco grants, the AMA acts as a conduit, assessing research requests and allotting financial assistance, not to its own institute, but to scientists and institutions throughout the country." Do you see that?

A I see that, yes.

Q In your opinion, is that a true or false statement?

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

A That's a true statement insofar as the Biomedical Research Institute, which was formed in 1963, they brought in a director named Roy Ritts, who was asked to run the tobacco-funded projects. When he refused to do so, they asked him then -- it created a problem. He was specifically brought in to direct the brand new Biomedical Research Institute in 1963. When he refused to run that program based on his own ethical standards and values at that time, it created a problem for the AMA. They had to find someone else, No. 1, to run that tobacco project; and, No. 2, to find some way to do it.

That's when they went to the Board of Delegates in December of 1963, the House of Delegates, and said, "This is what we want to do. We want to take $500,000, we want to earmark that toward funding of a study on smoking under the AMA-ERF," and they brought in -- in fact, Dr. Roy Ritts specifically brought in Dr. Ira Singer, who was a colleague of his previously, to run that as secretary of that project.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Q What about the part of that quote that says the AMA acts as a conduit, assessing research requests and allotting financial assistance, not to its own institute but to scientists and institutions throughout the country? Is that an accurate statement?
A That the tobacco money wouldn't be spent on its own institute?
Q Right.
A Yes, yes, I've already agreed with that. But that doesn't mean that the AMA-ERF didn't give money to its institute, which they did do.
Q What amount?
A I don't know. I'd have to go back and look at the financial information. But they did give -- the AMA-ERF did give money to its institute to conduct research, not on tobacco.
Q Does your copy of Exhibit 4083 have as its third and final page a letter to the Tribune from J. A. --
A Fabro.
Q -- Fabro, M.D.?
A Yeah.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Support provided by the UCSF Library www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Do you see that?
A Fabro, I think it is.
Q Have you read this letter before?
A Yes.
Q Do you have an opinion as to whether or not this letter contains accurate facts or inaccurate facts?
A (Witness reading document.) I think it's fairly accurate. It mentions the 1960 AMA Council on Drugs that I had mentioned previously that was authorized to evaluate existing medical evidence with respect to the effects of smoking and then decided not to. It doesn't talk about in 1961, when Senator Maureen Neuberger had asked the AMA to get involved on the tobacco issue. Yeah, I think this is a fairly accurate description.
Q Are there --
A I mean, there are some pieces missing in the history there, but he may not know all of it.
Q Are there any other documents that you found, in looking through the materials that you have, that you want to discuss and

http://legacy.library.ucsf.edu/tid/nur07a00/pdf
Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

amplify your responses this morning?
A Well, I mean, just the "Tobacco and Health" final report, the main one.
Q The big one?
A The big one, yeah.
Q I want to refer you back to Plaintiff's Exhibit 5489. It's something we've already been talking about. It's the "Medical News," February 15th, 1964.
A I tried to keep these in order, believe me.
Q They were basically in chronological order, although I may not have gotten it exactly right. But you have it in front of you now?
A Yes.
Q Again, looking at the side bar on the left, if you look at the -- not the last paragraph, but the one just before that, it says, quote, "The announcement of the project indicated that it would be financed by a substantial contribution from the American Medical Association and that contributions would be solicited from other sources, with the understanding that contributions would be accepted only if given without restrictions," correct?

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

A I see that statement, yes.
Q Is that, in fact, what happened, that whatever contributions the AMA-ERF received, they received without restrictions?
A When you say without restrictions, meaning they could give the money out to whoever they decided they wanted to give the money to.
Q Well --
A I think there were some parameters that had been agreed upon with respect to the project that is found in the news releases that are shared with the industry and between the industry and the AMA.
Q When you asked me that question, I was going to respond, I think that the studies had to pertain to tobacco and health, but beyond that is it true that there were no other restrictions placed on the tobacco money that was given to the AMA-ERF?
A If you look at the agreement that was spelled out in the press release by the AMA, the agreement stated what they would be working on and that was the goal of the project. In other words, those were the

http://legacy.library.ucsf.edu/tid/xur07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/fsjl0001

parameters in which the money was given, that they were going to determine what, if any, substances they could find in tobacco smoke caused human disease, and, if so, could they be removed.

Q Beyond that, do you know if the tobacco industry imposed any restriction whatsoever on the money they gave to the AMA-ERF?

A No. In fact, I think they were critical of the AMA-ERF for wasting some of it, a great deal of it.

Q Do you know how many studies funded by the AMA-ERF were cited in Surgeon General reports on the issue of smoking and health?

A I'm sure a number of them were.

Q You don't know the number?

A No, I don't. That would take a long time to determine, but I bet somebody had the time to do it.

Q But as far as you know, it hasn't been determined yet by you or anybody you know, correct?

A No. I know that I can physically do it, but. . .

Q I'm not going to ask.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Document from www.industrydocuments.ucsf.edu/docs/fsjl0001

A Okay. I have all of the Surgeon General's reports, and I have "Tobacco and Health."
Q Let me ask you about the stack of documents that I provided to you, the exhibits that I read off to you, this stack that we've been looking at throughout the day. Are these documents that you've collected?
A No. Not me personally, no.
Q Who did collect them?
A Originally?
Q Sure.
A I mean, in terms of where they originated? I mean, we know they originated with companies at some point.
Q Are these documents in the DOC archives?
A Yes. I will tell you how they got there, because that's your next question.
Q Thank you.
A My understanding is that most of the -- well, some of these are -- for example, Plaintiff's Exhibit 5488, which I don't think has ever been -- I mean, it may have been, I don't know if it's been a Plaintiff's exhibit before or not. I believe that we originally got this directly

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

from the AMA, although I could be mistaken on that. I would say that the majority of these documents, however, that we've looked at -- and they have additional exhibit marks on them -- came from a couple of cases, but most of them originated in the mid-1980s with Cipollone. They were then -- some of these are water marked actually with, I believe, Texas litigation. I might be mistaken. No, some of them are, "Produced in" -- I can't read it. I can't read the water mark. It does --

Q For whatever it's worth, I think you're right. I think that some of them are from the Texas litigation. There are some stamps that are rather difficult because they run across the whole page, right?

A Right. And that would be in 19 -- I want to say '86 or '87, there was a group of attorneys in Houston that had put together -- I think it was called "Cig Lit," was the name of the group. It was sort of a small, loose-knit coalition. They were then shared -- to my understanding, they were shared with Joe Tye, who used to be the president

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

or the director of STAT, Stop Teenage Addiction to Tobacco. Why they were shared with him, I have no idea. They remained unopened in his office, and he sent us all of the boxes, which actually remained unopened in our archives until 1991, when I opened them.

Q Just to clarify, if we look at Plaintiff's Exhibit 4082, I think there's the water mark you were talking about?

A Yeah.

Q And it does say "Produced in Texas in connection with" --

A Litigation.

Q Looks like litigation.

A 8, slash, 87.

Q So, those documents came originally from plaintiffs' tobacco lawyers; is that fair to say?

A Yeah, I believe so. Yeah, I believe they originated with the Cipollone case. Marc Edell would be the attorney.

Q Are there any documents in this stack that you know did not come from plaintiffs' tobacco lawyers?

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

A Yes.
Q Which ones, please?
A Well, they would be anything that was -- a lot of the publications that you find, either in JAMA or the lay press or American Medical News, some of the correspondence that the AMA sent. You have to remember that Dr. Blum was an employee of the AMA for a period of time and was also -- even prior to that was a part of the resident physician section back in 19 -- it would have been like '77 or '78. I would say that probably two thirds or three fourths of these originated in some sort of litigation somewhere, and the rest of them we got from either going and finding these very publications, or whatever. And there's some correspondence in here, like this letter from Dr. Roy Ritts, Plaintiff's Exhibit No. 5496, which is obvious it was a letter from Dr. Ritts to Dr. Blum in 1984.
Q Did you or anybody else at DOC attempt to find the defense exhibits from any of those tobacco cases, exhibits that would relate to this issue of the AMA?

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

A Not to my knowledge, no. In reading -- I should say, though, in reading some of the documents that were included with this entire set here, I mean, that would be depositions of Dr. Ernest Howard, deposition of Dr. Charles Macenski, deposition of Dr. Walter Wolman -- these are all AMA people -- there was a number of defense exhibits that were introduced. In fact, some of the defense exhibits were the same as some of the plaintiffs' exhibits.

Q Do you know for sure whether any of these documents were obtained from the AMA?

A That's a good question. I do not know that.

Q Do you know --

A I do know that Marc Edell in Cipollone tried to obtain documents from the AMA.

Q He tried to subpoena them?

A Yes. Well, I don't know if he subpoenaed them or not, I couldn't answer that. I do know that in deposition, certain depositions of people, they were asked specifically to bring documentation showing, you know, correspondence, whatever.

Q Have you or anybody at DOC attempted to get

http://legacy.library.ucsf.edu/tid/nur07a00/pdf
Digitized by the Internet Archive www.industrydocuments.ucsf.edu/docs/fsjl0001

documents directly from the AMA --
A Yes.
Q -- bearing on this issue?
A Yes.
Q How have you tried to do that?
A Well, through a couple of ways. Through delegates, who we've hoped would help us look into this, staff members that are presently at the AMA, and indirectly. All of my research was the focus of a June 10th, 1997 NBC story, national story on the news, and NBC also tried to solicit documentation from the AMA, and they interviewed Dr. Lonnie Bristow, who at that time was, I think, Chairman of the Board of trustees or President of the AMA, I forget which one. But there have been several attempts made by us or indirectly.
Q So far unsuccessful?
A Yeah.
Q Why have you tried to get documents from the AMA?
A Well, I feel there are some missing links here. Obviously, I noted the missing link from the 1959 document which talked about

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Digitized by the Internet Archive http://www.industrydocuments.ucsf.edu/docs/fsjl0001

the possibility of a collaborative effort between the industry and the American Medical Association, and then 1960 -- well, '61 -- '59, '60, '61, '62 until 1963.

Q If you're trying to do a history on the subject matter, you believe that those documents would be helpful in getting out the whole history?

A Certainly, certainly they would. In fact, I mean, I plan to -- as soon as I'm done writing this and publishing this, that will be one of the things that I call on the AMA to do that they haven't done. They've never come forward with the information, and they've been asked several times.

Q Have you contacted anybody with the AMA to let them know you're writing such a history?

A Yes, they know very well that I'm writing this. I was actually removed from two separate committees which they had asked me to serve on on the tobacco issue because of what I was working on. It's interesting to point out, and I think it's fair I should volunteer this information, that the primary person at the AMA on tobacco in terms of a

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Document from www.industrydocuments.ucsf.edu/docs/fsjl0001

staff -- not the pecking order, because he has bosses and bosses' bosses, and so on and so forth, is Dr. Tom Houston, who for a period of about nine or ten years was the national coordinator for DOC, the organization that I'm the executive director of.

Q When you were mentioning people that you interviewed, some of those people that you interviewed have been members of DOC, too, correct?

A Yes. Dr Rick Richards, Dr. Paul Fischer.

Q And Alan Blum?

A Dr. Alan Blum is an obvious one, yes. Sorry.

Q Anybody else?

A Probably Dr. Ron Davis. I'm sure he has been.

Q Have you ever asked any plaintiffs' tobacco attorneys if they have any documents on this issue of the AMA and its relationship with the tobacco industry that cut in favor of the tobacco industry? Have you asked for the other side of the story, if they have any documents that tell the other side of

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Browse this new web site at www.industrydocuments.ucsf.edu/docs/fsjl0001

the story?
A It's an interesting question. The answer to that question is we want everything. I want everything. So, to answer your question, yes, I have asked not only of plaintiffs' attorneys but others that would have been, you know, investigating or maybe been in the situation.
Q What plaintiffs' attorneys have you asked?
A Marc Edell directly, an attorney in Hawaii by the name of Gary Gallagher. Those are the only two that I can specifically think of. I take that back. One more right here in Houston, Texas, Dr. -- Lawyer Doug Holford.
Q Have you ever asked Scruggs or anybody working with Scruggs?
A No, it was the other way around. The rest of the plaintiffs' attorneys have come to us and asked us for this information, because what -- I think what I've realized in trying to get information from various sources is that I now, or the archive now has more than anybody that we know of, anyone that we've met with. You know, I'll ask you,

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Mr. McConnell, if you have any additional information, you know, for our archive or for my purposes of research, I'd be happy to have it.

Q If I've got it, you'll probably find out on Tuesday.

A I will find out on Tuesday. I'm sure I will.

Q Have you asked anybody --

MR. HOAG: Can we take a break? I got beeped.

MR. McCONNELL: That's fine. Let's take a break.

(A short break was taken.)

Q (By Mr. McConnell) I was asking you questions about whether you had tried to obtain documents relating to the subject matter from other sources. Have you ever asked anybody from Mr. Rosenblatt's office if they had any documents bearing on this issue?

A That's a good question. I don't think I have. I think -- I think it was the other way around. They probably asked us if we had information on this topic.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Support provided by: www.industrydocuments.ucsf.edu/docs/fsjl0001

Q How do you assure yourself when you receive these documents from plaintiffs' lawyers that these documents are, in fact, genuine documents?
A Well, as I said, two thirds to three fourths of these came to us in the initial bundle of boxes, and those were all -- every one of them that was marked with a Bates number in those particular boxes -- I'm not talking about some of the other documents here that -- I shouldn't say every one of them, because some of them may not have been. Many of them were marked with Bates numbers and/or exhibit numbers, and, after retracing how these came to the office, I had learned that the attorney who originally sent these to Joe Tye was an attorney in, I believe, Beaumont, Texas, and I've had conversations with him since that time. So, I've pretty much determined that that's where they originated. I don't remember his name.
Q Right. You know that you got it from the plaintiffs' lawyer?
A Right.
Q But how do you know that the document you're

http://legacy.library.ucsf.edu/tid/nur07a00/pdf
Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

getting is a complete document, is an accurate document?

A Well, sometimes I don't think you can know that, if it's complete or -- in fact, I believe that there are some documents that I've looked at that have maybe a page missing or, you know, a portion missing. Now, there are -- there are -- I believe they're called redaction notes or something, and those all came attached to these documents when we received them. And so in some cases the information was left out for various reasons, but of redaction.

Q I want to shift gears. I'm going to ask you just some general questions about the ads before I get into specifics. Then I'm going to turn things over to Mr. Hranitzky, who's going to ask his stuff, and I'm going to try to look at -- I don't know if you guys have done anything to pare down the ads, or I'll just look at them all, but --

MR. HOAG: We're going to need to go over them all. I can go over and put them into categories that they fall into.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Browse this item online at www.industrydocuments.ucsf.edu/docs/fsjl0001

Q (By Mr. McConnell) Okay. So, let's get into at least some of this stuff. I've got your C.V. here. If you need to consult it, go ahead. My question's going to be have you published anything in a peer review journal regarding cigarette ads, pre-1969 cigarette ads?

A I've included that topic in articles that have been published in peer review journals.

Q Why don't you tell me which articles? And feel free to refer to the C.V.

A (Referring to C.V.) The Patient, Doctor and Society, which is actually a textbook, a medical textbook, in a chapter called "Tobacco Abuse." "Real Progress versus Public Relations and Tobacco Control," which was in published in Seminars in Respiratory and Critical Care Medicine.

"Guidelines for Policies: Is it really possible to eliminate tobacco advertising and promotion," was a presentation made at a world conference which was peer reviewed prior to the -- prior to the presentation being made. Technically, my Master's thesis, which is peer reviewed. Even though

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Browse this item at http://www.industrydocuments.ucsf.edu/docs/fsjl0001

it's not published, it is peer reviewed. That's how you get your degree. That was a comparitive analysis of tobacco sponsorship of sport, international comparative analysis, but that included obviously cigarette advertising prior to 1971, when television ads went off the TV. That's pretty much it.

Q Now, we'll go back over those, and my question's going to be focused on the issue of the old ads. What was the thrust of The Patient, Doctor and Society article with respect to old cigarette ads? Old, I mean '69 and back.

A I can help narrow this down a little bit more.

Q Okay, please.

A Most of this was focused on the cigarette ads that appeared in medical journals and the health claims that appeared in cigarette advertising. That was the thrust in all of those articles.

Q With respect to cigarette ads that made health claims, what time period are you talking about?

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

A Late 1800s through 1969, since you're asking me about prior to that.
Q What cigarette ads in 1969 made health claims?
A Virginia Slims is probably the most recognized.
Q What health claim did Virginia Slims ads make in 1969?
A Well, the word "slims" and "lights," "ultra lights." Those are words that appeared roughly about that time. Those were words that were developed in advertising campaigns as a result of the Federal Trade Commission cracking down on the more, quote, overt health claims in cigarette ads.
Q In fact, the Federal Trade Commission does regulate the content of cigarette ads, correct?
A Well, they regulate the content of all advertising.
Q Right, including cigarette ads?
A Yes. In fact, they have specifically stated on at least two occasions, not counting anything that the FTC did with respect to warning labels, because technically that

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

would be considered content of a cigarette ad -- in 1950, I believe it was 1950, although the investigation may have ended earlier than that, they did put out a report that essentially ordered the six major companies to cease and desist from using very specific health claims in their cigarette advertising, and the report went on to say that those ads, the majority of those ads were false, misleading and deceptive.

Q What year was that?

A 1950. I believe it was 1950.

Q Are you sure it was '50, as opposed to '54?

A It may have been '54. It was in the early 1950s. I don't recall off the top of my head. I believe there was another one in 1958 that was very specifically targeted at Chesterfield, though.

Q How long has the FTC regulated cigarette ads?

A Since the inception of the FTC, I'm sure. Had to.

Q Would you agree that the people at the FTC have expertise regarding cigarette

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Digitized by the Internet Archive www.industrydocuments.ucsf.edu/docs/fsjl0001

advertising?
A Some do and some don't, I'm sure.
Q Can you name somebody who does who's ever worked with the FTC?
A If you look at the FTC -- first of all, the Federal Trade Commission is a federal agency, and the commissioner is appointed by whoever happens to be there. So, if an attorney is appointed to head up the FTC, does that attorney have, you know, specific knowledge about cigarette advertising? Maybe, maybe not. So, I think it changes with each -- as each administration changes, whether or not people in the FTC have, you know, background in cigarette advertising.
Q Well, the entire staff of the FTC doesn't turn over with each administration, does it?
A No, but a number of people -- certainly the higher-ups do, and the higher-ups call the shots in the investigation.
Q Although in your experience, isn't it true that the higher-ups rely to a large extent on the work of staffers below them?
MR. HOAG: Object to the form of the question.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Library http://www.industrydocuments.ucsf.edu/docs/fsjl0001

A I'd say no, not necessarily. There have been commissioners of the Federal Trade Commission who have made statements to congressional committees that go against what their staff has been telling them.

Q (By Mr. McConnell) Have you collected cigarette ads?

A Yeah, sure.

Q You, personally? Have you, personally?

A Yeah. I personally have collected cigarette ads, yes.

Q How have you gone about collecting cigarette ads?

A Well, subscribing to lots of publications, taking a lot of photographs and videotape. In fact, we call this -- in our office, it's a form of sociological research, it's called ethnographic inquiry, which is placing yourself where tobacco companies are. Essentially, I mean, that's about it. I mean, we've bought them from time to time as well. Now with EBAY, there was a great item available on EBAY, which was a recent Camel promotion where the free packs of Camel were sent out in a mini briefcase, and it was a

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Browse this item at http://www.industrydocuments.ucsf.edu/docs/fsjl0001

plaintiffs' lawyers briefcase. When you opened it up, you got, of course, the two free packs of Camels, but you had all of these sort of funny jokes about plaintiffs' lawyers in there. So, I thought it was sort of funny. That went for 57 bucks on EBAY two days ago.

Q Among other things, you've collected old cigarette ads, correct?

A Yes.

Q Ads that existed before you were born, correct?

A That's correct.

Q How have you gone about collecting those ads?

A A number of them have been purchased at flea markets, stolen from waiting rooms.

Q How do you steal old ads from waiting rooms?

A You'd have to be collecting for a while. I didn't personally do that. That was Dr. Blum who took a few of those.

Q Would you say that the collection of old cigarette ads has been done systematically?

A That our collection has been?

Q Right.

http://legacy.library.ucsf.edu/tid/xur07a00/pdf Browse this item online at www.industrydocuments.ucsf.edu/docs/fsjl0001

A It's been done systematically in that we have looked for every possible example of a cigarette ad or promotion. I mean, it's as systemic as you can get without, you know, obviously trying to calculate the millions and millions of different images that are out there.

Q Let me give you an example. Has DOC or anybody at DOC ever tried to go out, for example, and get all of the issues of the Saturday Evening Post in the 1950s and get and all of the cigarette ads from all of those issues?

A No.

Q Or for any magazine?

A No. I'd say the two magazines that we have the most of, and it's not the entire set, obviously, is Time and Life.

Q When did Life begin publication?

A That's a good question. I have no idea.

Q Time's been around awhile, correct?

A Yeah, Time's been around. I don't -- Life, they had a break there for awhile, too. Actually, Life stop publishing, then came back.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Browse this document online at www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Have you attempted to collect cigarette ads that were disseminated in the state of Florida?

A Yes. In every state we've tried to collect, and, yes, we have.

Q Do you have them segregated? If I asked you, please go to your archives and get for me all the ads that appeared in the state of Florida, would you be able to do it?

A You're creating the same nightmare that the Attorney General's office did when they asked me for the same thing. To answer your question, do we have them, yes. Can I go and find them quickly? No, but I could find them. It would just take awhile, and I'd bill you by the hour. I'm just kidding. I'm just. . .

But, now that you mention it, I'm extending my invitation on the record, if you'd like to come by and see how it's organized and see what we hold, you're welcome to it.

Q I wish I knew it before I came here, I would have set aside an extra day. Maybe we can do business.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Digitized by the Internet Archive www.industrydocuments.ucsf.edu/docs/fsjl0001

Has there ever been a study conducted on the consumer impact of cigarette ads from the 1950s?

A You're talking about published in literature that's available to the public, I assume?

Q Right.

A Because I know that tobacco companies have studied the impact of cigarette advertising on consumers in the 1950s.

Q How do you know that?

A Documents that I've read.

Q What documents?

A Held in the archives. I can't point to the specific document right now.

Q Tell me generally what documents have you seen from a cigarette company --

A Not a cigarette company. Well, I believe they've been in conjunction with some of the FTC reports that I've read. So, for example, some of the -- more of that is the development of campaigns, which does include how consumers will respond, obviously. So, they're more plans than actually studying it once it's been out there, but those are more focus groups than studying it in its

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

developmental stages.
Q Have you tried to look on the Internet or through any source through plaintiffs' attorneys, look at internal tobacco company documents with respect to the issue of advertising?
A Not other than the ones that we have.
Q I mean, you know they're available on the Internet, don't you?
A Yeah.
Q All right.
A I have a hard enough time trying to go through all of the many documents that we have, literally, and, I mean, to be perfectly honest with you, that -- the topic that we're talking about, which is the old ads, I feel that, because we have written about those to a fairly large extent and really documented, I think, the various themes, health claims and ads in medical journals, that I probably have not revisited that as often as I do some of the other projects that I work on.
Q Yeah. I'm asking about the issue of impact on consumers, so let me give you a concrete

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

example, if I can. I know that at least some of the ads that you're going to talk about are the Camel ads, "More doctors smoke Camels," correct?

A That's correct.

Q All right. And during what time period did that ad campaign run?

A It ended in 1952. That was when the last ad appeared, which is -- which, now that I think of it, I don't know exactly when that FTC report came out. But, anyway, I believe it was from about 1943 -- it may have been '45 to '52, roughly that time period. But it started -- most of the ads first appeared in medical journals, it was almost simultaneous -- simultaneous that they appeared in the lay press as well, but they actually did make their first appearances in medical journals.

Q Do you know what the impact of that specific ad campaign was on consumers?

A No, I don't.

Q Do you know if there's any study anywhere that shows that?

A I know there's -- I know there have been

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

papers written about that very campaign. I don't know specifically if they focus on that or not.

Q There have been papers written about that campaign by people from the FTC, among others, isn't that right?

A Oh, sure, yeah.

Q Haven't there been papers written saying that that campaign backfired?

A I don't know if you could say that. If you look at when that started -- I want to make sure my dates are right. I believe it was 1945 to 1952 that that campaign ran in the lay press. It may have appeared earlier in a medical journal. If you look at the sale of Camel cigarettes, according to the FTC between 1945 and 1946, it jumped 30 million. That's a lot in one year.

Q What happened to cigarette sales from 1952 to 1956?

A Cigarette sales in general?

Q Yeah.

A They leveled off. There was a decrease and then an increase.

Q Right.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

A But, again, you put this in the context, the advertising must be placed in the very context in which the scientific literature was being publicized at that time.
Q Well, Camel wasn't alone, isn't that right, in the early Fifties and mid-Fifties?
A Oh, by all means, they were not alone.
Q In fact, you're going to show me a bunch much ads where it will be your opinion, won't it, that these ads contain health claims, correct?
A Yes.
Q Let me just back up for a second. Is there a single cigarette ad anywhere in this country where the statement is made that cigarettes do not cause cancer?
A That's a good question. I don't know if I've read that or not.
Q You don't know of one, is that right?
A I'm saying I don't know if I've read that in a cigarette ad or not.
Q Have you ever seen a cigarette ad where the ad says cigarette smoking does not cause emphysema or any form of COPD, or anything else you want to call it?

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Document hosted at www.industrydocuments.ucsf.edu/docs/fsjl0001

A I think if you look at the themes that were used in the advertisements, less irritation, especially when they talk about in the ads nose and throat and other -- what other organs are there for --

Q Accessory organs?

A Accessory organs, thank you, the Lucky Strike ads -- was that Lucky Strike or Chesterfield? Chesterfield. I think that the implication there and that the part of the promotion is to say that, you know, certain things are -- are, you know, going to be okay with this product.

Q Just put aside implications for the moment. Do you know what the diseases are that are at issue in this case?

A Well, sure.

Q What are they? Lung cancer?

A Lung cancer.

Q Emphysema?

A Sure.

Q Cardiovascular?

A (The witness nodded his head.)

Q Berger's disease.

A (The witness nodded his head.)

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Digitized by www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Do you know what else?
A I haven't -- I don't know that I've read the entire list. I'm sure there's some digestive ones, though. I bet there are. And I'd be willing to bet that those people that have, you know, some sort of cancer down there or whatever that smoked a Camel cigarette may believe that Camels aid digestion, because that's what they said in their advertising. If you were constipated and you had tried just about everything short of suppositories on a daily basis, and you saw an ad that said Camels aid digestion, wouldn't you give it a try? I sure as heck would.
Q I'm not sure I --
A Not as a suppository.
Q Back to the question, we talked about lung cancer. Let me just ask you about the specific disease. The question is can you think of a cigarette ad that denies causation. So, lung cancer, you couldn't think of one?
A I can't think of one, no.
Q Emphysema?

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/fsjl0001

A I cannot think of one.
Q Heart disease?
A That's a good question. I can't think of one right now, but that doesn't mean I haven't read that.
Q Any kind of cancer?
A I wouldn't say heart disease. I think the word heart has been used a number of times in cigarette ads.
Q Any sort of cancer? Not just lung cancer, but any sort of cancer?
A Well, I take that back. Yeah, cancer, I have.
Q Which one?
A That would be the Frank statement, 1954. Well, you asked me if I had read --
Q That's fine. That's a fair answer. Any others?
A Not that I can think of, no.
Q Have you performed a content analysis of cigarette ads?
A Have I studied and written about the contents in cigarette advertising?
Q Well, let me back up. Do you know what a content analysis is?

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

A Yes, I know what a content analysis is, and you're referring to the field of advertising. No. In that sense no, I have not.
Q And typically in a content analysis independent coders are used, is that right?
A That's right.
Q You haven't done that with respect to cigarette ads?
A No, I have not.
Q DOC has cigarette ads going back to 1865, isn't that right?
A I think that's the first one I saw, yeah.
Q What's the oldest one that you're going to use in this case?
A That's a good question. I think, as it pertains to the class, we probably can't go back too far, some of those people would no longer be with us. So, probably the 1920s. Maybe the late teens, but the 1920s.
Q Well, in researching old cigarette ads, have you also tried to take a look at society in general in these time periods, the 1950s, '40s?
A Yeah. Actually, I think you asked the

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Document hosted at www.industrydocuments.ucsf.edu/docs/fsjl0001

question in either my first or second deposition, and what we have done very, very differently than other collectors that are out there -- and believe me, there's lots of them besides us -- but what we have done is tried to keep all of the advertising, when possible, in its original context. In other words, we're not going to dice up a Time magazine or a medical journal just to save the ad. That doesn't mean that we don't have separate ads, you know. They may have come to us that way.

Q Why do you think keeping it in the context is important?

A For the reason that you just stated, which was to sort of preserve the era in which it was, you know, found.

Q Is it fair --

A Oftentimes, too, though, there's a value of juxtaposition that's been very important to us.

Q Is it fair to say that people in the United States in the 1950s were especially interested in the issues of science and technology?

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Browse this item online at www.industrydocuments.ucsf.edu/docs/fsjl0001

MR. HOAG: I object to the form of the question.

A Who in the United States?

Q (By Mr. McConnell) People?

A Just people in general?

Q The general populous was especially interested in the 1950s in the issues of science and technology?

MR. HOAG: I'm going to object to the form of the question. It's overly broad and vague.

A I don't -- I don't know.

Q (By Mr. McConnell) You don't know. In the 1950s, were there other products besides cigarettes that used doctors and nurses in their ads?

A Oh, sure, yes.

Q What other products?

A In fact, that's interesting you mention that, because the Federal Trade Commission had a code prior to the 1950s that dealt with what they called "the men in white." That was any, you know, doctor, dentist, nurse, anyone who was appearing in an advertisement, and the way that that read

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Buckles Mahan www.industrydocuments.ucsf.edu/docs/fsjl0001

was that they could appear, but it had to be from their own personal experience with that product, and if it were not, it had to say "dramatization."

Q Back to my question, were there other products?

A Yes there were other products.

Q Which products also used doctors and nurses in the 1950s?

A Correct.

Q Which other products?

A Oh, I couldn't tell you off the top of my head, but I'm sure that there were.

Q How about Coca-Cola?

A I'm sure it was. In fact, Coca-Cola was advertised in medical journals along with even some different whiskeys that were promoted by doctors.

Q But weren't there actually Coca-Cola ads in the 1950s that used a nurse the ad itself?

A I believe so, yes. Sure.

Q Have you looked at any internal company documents regarding the intentions behind these ad campaigns? Before I asked you about the effects, but have you seen any

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

company documents about the intentions behind the ads in the 1950s?

A Only those which have been cited by FTC reports. I haven't -- that just means that I've read the citation. I haven't necessarily read the documents.

Q Do you have an opinion as to whether these ads in the 1950s had any effect on minorities?

A Any effect on minorities?

Q Yes, in terms of cigarette consumption?

A I think they had an effect on everyone in terms of cigarette consumption.

Q I mean, I notice from the ads that I looked through I didn't really see any ads that had minorities in the ads.

A Oh, yes, there were.

Q In your collection, up in the collection that you guys have produced?

A Oh, no. I didn't -- I didn't see any. It's sort of hard to tell, because, I mean -- (Indicating.) I'm sorry. I think there were a number of -- not a number. There was a few in there that one could maybe say looked Hispanic or Latino in some of them,

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

but --
Q In the 1950s?
A Yeah. Had that appearance, I'm saying.
Q Will you point those out to me when we get to them?
A I'll try.
Q Thank you. Was there a notion in the advertising circles in the 1950s called the hard sell?
A I recall that term. I don't know what era that's from.
Q Do you know who was the author of that term, the hard sell?
A No.
Q Do you know if the hard sell in advertising was based on imagery or on lots of text?
A I don't recall. I recall reading about it, but I don't recall who came up with it.
Q If you had to compare the amount of text in cigarette ads post-'69 with pre-'69, would you say there's more text in the older ads or the newer ads?
A The older ads.
Q There's more imagery in the newer ads, correct?

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

A Correct. Although you could say that the imagery was always there, it was just the text was overlaid, you know.
Q In the ads in the 1950s, is it your opinion that some of the brands were advertising themselves as being in some way safer or more healthful than other brands?
A Yes. In fact, there was a number of brands that used the word "safe," a number of brands that used the word "health," a number of brands that used a variety of potential health conditions that could be avoided.
Q And is it fair to say that those same ads were necessarily suggesting that other brands were less safe or in some way harmful?
A That the cigarette ads, while saying that this one was safe, was saying that another brand was unsafe?
Q Less safe, correct.
A Less safe? Yeah, yes.
Q Have you looked at articles in magazines from the 1950s that commented on these cigarette ads that took place in the 1950s that seemed to have a health theme?

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/fsjl0001

A Have I looked at magazine articles?
Q That discuss those cigarette ads?
A I've seen some of the reports that covered the FTC investigations. Time magazine, I believe it would have been like 1990 -- 1953, '54, something like that.
Q Did you see articles in Fortune magazine?
A That rings a bell. I don't know if I'd read that or not.
Q Did you see articles in Business Week magazine?
A I don't think so, no.
Q Do you know if any of the articles in any of the business or advertising magazines in the 1950s said that these health theme ads were counterproductive and were making less people smoke?
A I've read that. I think in Advertising Age there was an article in the mid-Fifties that suggested that that's what the industry felt. They weren't saying that -- in other words, the industry felt that they were being somewhat counterproductive.
Q Are you familiar with a publication called Printers Ink?

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

A It rings a bell.
Q It was an advertising trade journal.
A Yeah.
Q Did you ever look to see what Printers Ink said about these ads in the Fifties?
A No.
Q Now, you're familiar with the campaign of "Reach for a Lucky instead of a Sweet"?
A That's correct. That would be Albert -- what's his name, the guy that invented that slogan?
Q Are you thinking of Lasker?
A Lasker, thank you.
Q What time period did that ad run?
A I believe it started in 1929 and ran for, I think, about a decade.
Q Do you know whether or not those ads by Lucky Strike provoked a reaction from candy manufacturers?
A Provoked a what? I'm sorry.
Q A reaction from candy manufacturers?
A That, I don't know. The only thing I really know about that campaign specifically is -- aside from the themes that they used in the, you know, less irritating to nose and

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Digitized by the Internet Archive www.industrydocuments.ucsf.edu/docs/fsjl0001

throat, whatever, and the LSMFT, Lucky Strike Means Fine Tobacco, which is sort of a memorable theme that was later actually, I think, on television, that Albert -- what's the guy's last name?

Q Lasker?

A Lasko.

Q Lasker?

A Lasker, thank you. I don't know why I can't remember that. He was actually very instrumental in the American Cancer Society, of all groups, I think both he and his wife. I know it was started in like 1914 by the Rockefeller Foundation, but he got involved in sort of a takeover. It used to be called the American Society for the Control of Cancer. That's how it was founded. And in 1944 is when Lasker took -- helped take over with some other people. So, I think -- but I think there's -- you know, I don't know what that means, other than the fact that here's a person who worked on a very successful cigarette account and, you know, sort of almost had walked around becoming branded by his own slogan, and who later

http://legacy.library.ucsf.edu/tid/nur07a00/pdf
Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

sort of helped to create the American Cancer Society. I don't know if that's hypocrisy or irony, or what it is, but. . .

Q Back to my question about the Lucky Strike campaign, "Reach for a Lucky instead of a Sweet" --

A Uh-huh.

Q -- isn't it true that in response to that ad campaign, candy manufacturers took out ads that said things like, "Do not let anyone tell you that a cigarette can take the place of a piece of candy. The cigarette will inflame your tonsils, poison with nicotine every organ of your body and dry up your blood, nails in your coffin"? Weren't there ads like that?

A I haven't seen them. I'd love to seem them. That sounds great. No, I'm just saying who was the candy company? Who was the manufacturer? I'm curious, because, you know, if you -- you could say that that would have been perhaps the first counter ad in the United States. And when was that, in the 1930s? So -- although actually that's not true, because Mad magazine was making

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

fun of them in the 1930s as well.

But, if you look at the ratio of cigarette ads to candy company ads that said "No, my God, this is terrible, you can't replace a piece of candy with a cigarette because it would do whatever to you," I mean, what impact is that going to have?

Q In your opinion, what impact is it going to have?

A Probably very negligible, just like what impact is the truth campaign having in Florida to this very day with a $200 million budget? None. Very little.

Q What happened to total per capita sales of cigarettes in 1953?

A 1953? I think that's when they plummeted. I'm just trying to remember the little graph.

Q And also did they go down in 1954?

A I think it was like a year and a half or maybe it was two and a half years, something like that.

Q Isn't it the case that for a two-year period cigarette consumption declined almost 10%?

A I haven't heard that number. I didn't know

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

-- I don't think it was that dramatic.
Q 8.9 percent?
A Okay.
Q By that?
A Yeah, okay. I know that it was a very dramatic plunge, yes.
Q And this is during the time period when some of the ads ran that you're going to show me, aren't you, isn't that right?
A That's correct, yes. It's also the same -- I mean, put them back in context, because that's what we do at the archives, we try to keep things in context. So, you know, we have to remember that at the same time some very damaging reports were coming out. 1950, 1952, 1953, 1954, those are some huge years in terms of major reports, two by Hill and Doll, two by -- the one by Wynder by himself, one by Wynder and Graham. I believe there was a couple of others actually in there, too. There's probably at least six between 1950 and 1954 that were huge in terms of their impact on the smoking and health research.
Q By the way, speaking of those studies, the

http://legacy.library.ucsf.edu/tid/nur07a00/pdf
Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

Wynder and Graham study was published in what journal?
A JAMA.
Q What about the others?
A Hill and Dahl were in the British medical journal, but they received huge attention here. In fact, they were written about in JAMA here.
Q And Wynder's?
A That was -- it was some kind of a science journal, and I don't remember what it was. I know I have a copy of it, I just don't remember the name of the journal. It was not one that would -- you know, I'd be real familiar with. That's why I'm not thinking of it.
Q The brands that were engaging in the advertisements in the 1950s that seemed to have health themes were what brands?
A Primarily -- primarily Camel, Chesterfield. Well, Lucky Strike. I'm trying to think of all of them. I'm trying to think of some of the themes. Oh, Philip Morris, duh.
THE WITNESS: Can you spell duh? Sorry.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Browse this new web at www.industrydocuments.ucsf.edu/docs/fsjl0001

A Kools, because of the menthol. I'd say those were the five -- probably those were the five most popular brands at the time. Certainly Camel, Philip Morris, Kools, Chesterfield, Luckies. You can throw Pall Mall in there. They had some pretty interesting ads as well.

Q I know that there's no Lorillard lawyer here to yell at me, but Old Gold would be in that list, too, wouldn't it?

A Thank you, yes. Old Gold would definitely be in that list.

Q All right. Now --

A They had some of the best commercials on television, by the way. That was the dancing cigarette boxes, the mother and the daughter.

Q Now, in the 1950s, the No. 1 brand was Camel, is that right?

A In the 19 -- what year?

Q Fifties?

A Yes.

Q What happened to Camel's market share from the 1950s to the 1960s?

A I believe it leveled off and began to go

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Browse this document online at www.industrydocuments.ucsf.edu/docs/fsjl0001

down.
Q Significantly?
A Significantly, but even more significantly in the Seventies, is when they really, really lost market share.
Q What about Chesterfield?
A You've got to remember that at the time that Camel was going down, and I think that RJR made some serious mistakes in terms of the advertising dollar, they were pumping up Winston like crazy, and Winston was going this way. (Indicating.)
Q Up? You were indicating up?
A Yes, up. So, to say, you know, that -- that Camel cigarettes was going down and that that was very significant in terms of the company's bottom line, I think that there's no question in business and advertising you're going to make mistakes from time to time, and you're going to, instead of, you know, keep pumping the same and possibly more money into an advertising campaign, decide that another brand that was not doing so hot like Winston you needed to pump up.
Q Is it fair to say that, at least for Camel,

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Chesterfield, Lucky Strike, Philip Morris brand, Pall Mall and Old Gold, that their market shares dropped precipitously from the 1950s into the late 1960s?

A Go through those again, please.

Q Camels, Chesterfields, Lucky Strike, Philip Morris brand, Pall Malls and Old Gold.

A Let's look at what happened with Philip Morris brand. What happened with that brand? Well, it was redesigned really. They -- it wasn't redesigned itself. They took the brand and let it be, and they decided to do something else. What happened in the 1950s? I mean, come on, let's put it in the context of what was going on, the Korean War, for God's sake. What did they do with another brand when the boys came back from the war? They redesigned the box, they put the war medallion on the top -- that's where the red Chevron comes from -- "Welcome back, here's your Marlboros," which used to be a women's cigarette. So, what did they do? Philip Morris pumped a load of money into the cigarette brands that they were, you know, congratulating our soldiers

http://legacy.library.ucsf.edu/tid/xur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

with. What better way to sell cigarettes than to be as patriotic as you could possibly be?

So, again, it's the same thing. Sure, Philip Morris sales came down. What was going on with Marlboro? It was increasing by leaps and bounds. Why? Look at the advertising dollars that were spent on those campaigns. And if you have them with you, I'd love to look at them. Camel --

Q The dollars, or what?

A Yeah, and the cigarettes. Camel and Winston was the same thing. Camel was going down because they were pumping money into Winston, all the way through the latter part of the 1950s but more so in the 1960s and significantly more so in the 1970s Seventies.

Q I just want to stick with the brands I'm asking about. Is it fair or is it not fair to say that those brands that I've named -- Camels, Chesterfields, Lucky Strike, Philip Morris brand, Pall Malls, Old Gold -- that they all declined precipitously in market share from the Fifties to the late Sixties?

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

A Yes, it is fair to say that, because the data that I've read, the information that I've read would indicate that those brands -- I can't say for sure if it was all of those brands, but I know for certain that Philip Morris, Chesterfield, Camel -- I know for sure I've seen data on information on those three brands that, yes, they -- the sales declined.

Q So, isn't it also fair to say --

A Market share.

Q -- that those ads from the Fifties, the health oriented ads for those brands didn't do a bit of good for those brands?

A But wait a minute. What did the FTC do in the 1950s? They said those ads are misleading, deceptive and false. Those were the words that were used by the Federal Trade Commission. So, you can't do that anymore. You're going to have to do something else.

Well, I think the guys that sit at the ad agencies are saying, "Okay, what do we do now? What should we do? Should we stick with this brand or do something else? Would

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Support https://www.industrydocuments.ucsf.edu/docs/fsjl0001

it be better if we leave that brand alone for a little while and kind of just not put as much money into and maybe do something with a different brand?"

So, I think you can't say that those ads -- because of those ads, that there was a backlash and it ruined the sales. I mean, certainly the 30-day --

Q Other people have said that --

MR. HOAG: Wait a minute. Are you finished?

A The 30-day test that was done for Camel, which was part of one of the FTC investigations, showed that it was a very successful campaign among those people who took the 30-day test, that more doctors smoke Camels, the 20,916 physicians that smoked Luckies. Those campaigns were based on success, the success that they -- and those are included in the FTC report, or investigation.

Q Which FTC investigation are you talking about?

A It's the one in the Fifties. I don't know. It's either the early Fifties or

http://legacy.library.ucsf.edu/tid/xur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

mid-Fifties, somewhere in there.
Q Is it your opinion that that report says that those ads, those ad campaigns were successful, the health oriented campaigns?
A No. I'm saying that they cited some of the people who worked on the campaigns, who developed them, and that those people were saying that, you know, "This is why we went with this advertising campaign, because this is what it showed." No, what the FTC said was that they were false, misleading and deceptive.
Q Let me focus on one of the examples you named, Marlboro. As you said, Marlboro was at one point a women's cigarette, correct?
A Correct.
Q And then it was repositioned?
A That's right.
Q What year was it repositioned in?
A '52, '54. I don't remember.
Q '55?
A '55.
Q Does that sound right?
A Yes. I was going to say '54. Okay.
Q And its first ad campaign was what, after it

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Support https://www.industrydocuments.ucsf.edu/docs/fsjl0001

was repositioned?
A The first ad campaign was a military-based campaign with tattoos on the hands and on the arms of men holding the pack, the new package.
Q Different kinds of men, but they had a tattoo on their hand, correct?
A Correct.
Q And one of them was a cowboy, correct?
A Well, that came later. The first ones were in uniform with the stripes on the sleeve and the tattoo on the hand. The white -- the white dress shirt with the tattoo on the arm. Those were the first ones that came out, and then, shortly thereafter, probably within the next -- I'd have to go back and actually look if it was months or if it was actually a year -- I think it was probably months, though, that, yes, they had a number of different images of men: A blue-collar guy with his hard hat on sitting in his director's chair, you know.
Q A golfer?
A A golfer, a scuba diver, which I never quite understood how you could possibly smoke

http://legacy.library.ucsf.edu/tid/nur07a00/pdf
Support provided by the UCSF Library
http://www.industrydocuments.ucsf.edu/docs/fsjl0001

under water.
Q Bookworm?
A Yeah, I think they had a bookworm. They had a sculptor. I've gone through the entire -- believe me, I've gone through the whole thing.
Q And what was the text of those ads?
A It varied. Well, it's interesting you asked that, because I think at first it was "Where there's a man, there's a Marlboro." That was the one with the guys dressed sort of in their military garb with tattoos, although those had a very -- they were varied a little bit. That continued into some of the other images of men dressed in variety. I mean, it slowly got rid of text and simply went to "Marlboro Country, Come to Where the Flavor Is."
Q Marlboro Country didn't come until '63, right?
A Yeah. I was going to say late Fifties or early Sixties, right.
Q I want to just focus on the mid-Fifties now, the first campaign. Isn't it true that the text, after the "Where you'll find a tattoo,

http://legacy.library.ucsf.edu/tid/nur07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/fsjl0001

you'll find a Marlboro Man," isn't it true that after that the text said, "You'll be glad you switched to a filter"?

A I recall reading those advertisements, yes.

Q Now, after the tattoo campaign, what was the next Marlboro campaign?

A I don't remember if -- I have the tattoo campaign, see, I distinguish that differently from some of the other images of the men that were sort of -- like the scuba diver didn't necessarily have a tattoo and that kind of thing.

Q You were just gesturing. How were you gesturing when you described the scuba diver?

A How was I gesturing?

Q You seemed to be gesturing.

A Leaning back in a chair, because he was leaning back in a chair. In fact, a lot of them were sitting in chairs, leaning back.

Q Wasn't that the "settle back" campaign?

A That's right.

Q That was after the tattoo campaign, wasn't it?

A Right, right.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Then after that --
A Then it was the Marlboro -- yeah, the Marlboro man, the cowboy theme. Actually, the cowboy theme, I can't remember now which one I saw first. I'd have to actually go through the whole chronology again, but I can't remember if it was an artist's rendering of a cowboy or the cowboy, you know, the human being with a photograph.
Q Is it fair to say that since 1963 the Marlboro campaign has had consistency in terms of its image and execution?
A The Marlboro --
Q Advertising campaign. Same imagery?
A No.
Q How is it different?
A I mean, you can't compare -- I mean, cowboys ride on horses not drive in F-1 cars, you know what I mean? I mean, there's been a huge variety in that campaign.
Q Most Marlboro ads even today involve cowboys and horses, correct?
A I would disagree with that. Are you talking in terms of number of images?
Q Correct.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf
Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

A I would disagree with that.
Q No, no, wait a minute. I'm not counting, you know, seeing a Marlboro car for a nanosecond on ESPN at 2:00 in the morning. I'm not counting that as an image, all right? I'm talking about actual ad campaigns that are out there that are considered traditional advertising, okay?
A What if --
MR. HOAG: Wait a minute. I'm going to object to the form of the question. You aren't the one being deposed, and for you to character an image as not being an image because you don't want it to be an image doesn't change the fact that that's his answer.
Q (By Mr. McConnell) You can answer. Excluding that, we're talking about traditional, paid advertisements in magazines and billboards and such.
A If you want to just restrict it to those, I will agree with your statement that the theme has been very consistently around cowboys and western themes.
Q And you think it's fair to say that if you

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Support provided by the Tobacco Industry Documents Project http://www.industrydocuments.ucsf.edu/docs/fsjl0001

were to look at a Marlboro ad --
A I want to change that. I mean, I assumed you were still talking pre-1970 anyway?
Q Yes.
A Okay.
Q All right.
A Because technically you could say in the last decade that that may not be the case, with the adventure team, the gear catalogs, the clothing and all of that stuff. I don't know that -- I don't know that I could agree with that.
Q If I showed you a Marlboro cowboy ad in 1978 and one from 1968, do you think you could tell them apart?
A Possibly, only based -- I mean, I might be able to, because I've looked at them. Could a lay person on the street, if you showed them the two and said, "Do you know when this was done or when this was taken"? I don't think they could, no.
Q If you were shown six different advertisements with cowboys for six different products, one of which was Marlboro, and the text was taken away, are

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Digitized by the Internet Archive www.industrydocuments.ucsf.edu/docs/fsjl0001

you sure that you'd be able to pick out the Marlboro ad?

A If you showed me -- I'm sorry?

Q Six different advertisements with cowboys, but I took away the text and reference to the product?

A Right.

Q Are you sure you'd be able to pick out the Marlboro ad?

A No. And the reason for that, there's a great billboard that's up right here in Houston that's probably nationally, because it's a national bank, Wells Fargo. They have this incredible cowboy theme with horses riding off into a sunset, and because of the red in the back and the sunset, I had to do like a triple take, because I thought, "Hey, I thought the billboards were gone from Texas," you know, because of the settlement here in the State of Texas. And I looked up at that, and I looked up at it again. It took me literally three times. I thought that was a Marlboro ad.

Q Have you ever seen a Digital computer ad which also used cowboys and horses?

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

A Digital computer ad. I may have, yes. I think I have, actually, yeah.
Q Going back to when Marlboro was repositioned in 1955, from that period on, was there ever a Marlboro ad that had a health claim in it?
A Before I answer that question -- I'll answer that question next. I think it's very interesting that what you just -- what we were just talking about, if there were six ads with cowboys in them, could you pick the one that was for Marlboro, six different ads with cowboys. I think that goes to the success of that campaign, and it goes to the success so much so that it's literally -- and it gets to some of the other things that I've written about that you cannot ban advertising in other countries. In fact, in France what they did in 1993, supposedly cigarette ads were banned, so they put up what looked like the old cigarette ad, and it says, "Do you remember me?" That's it. It didn't say Marlboro or anything, just the same sort of image, picture of the cowboy, the western theme. So, I think that goes to the success of the advertising campaign,

http://legacy.library.ucsf.edu/tid/xur07a00/pdf
Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

that everybody knows that that cowboy is a Marlboro ad.

Q Back to my question --

A Yeah.

Q The question was: Since the '55 repositioning, did any Marlboro ad contain a health claim?

A Yes.

Q Which ones?

A Marlboro Lights, Marlboro 100 Lights, Marlboro Menthols. Those were -- those were carry-overs from the introduction of the words light and menthol and ultra light into the population, into the advertising.

Q Besides the sheer use of the word light, which is part of the product name, and the use of the word menthol, was there any other health claim in any Marlboro ad ever since the repositioning?

A Talking about text or image?

Q Text.

A No, those would be the ones that I would think of.

Q Now, sticking with Marlboro ads, from '55 to '69, is there a single lie in any Marlboro

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

ad?
A Between '55 and '69, is there a single lie?
Q A false statement in a Marlboro ad.
A Talking about just looking at the text?
Q A false statement in a Marlboro ad.
A There's a --
MR. HOAG: Let me just make sure I understand. Are you talking about -- when you say a false statement, are you including the use of the term that he's already spoken about, light, or are you excluding that?
MR. McCONNELL: I'm talking about Marlboro Reds, so I am excluding that.
Q (By Mr. McConnell) Marlboro Reds, '55, '69, any false statement?
A Again, you're talking about a time period that obviously is before warning labels were required. Was there a false statement in the text of the advertisement? No. Was there a failure to warn? That's up for a jury to decide.
Q Have you ever looked to see whether elementary school textbooks have ever discussed these same health-oriented

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Browse this new web at www.industrydocuments.ucsf.edu/docs/fsjl0001

cigarette ads from the 1950s that you're going to talk about in your testimony?

A Have any what? I'm sorry.

Q Elementary school textbooks actually used these same cigarette ads you're going to talk about from the 1950s with the health themes in their discussion of health?

A I know that there are encyclopedias that are found in elementary schools that have covered this very topic.

Q Do you know whether any school health textbook has actually had images of these cigarette ads and used them to try to instruct elementary school children why they should not smoke?

A What time frame are you talking about?

Q Fifties.

A That there was a textbook in the 1950s?

Q I'm just asking you, have you ever seen such a textbook?

A I have never seen such a textbook, no.

Q How about from any time period?

A What do you consider an elementary textbook?

Q For an elementary school, that's what I meant.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

A I mean, I've seen --
Q That grade level.
A I've seen educational materials that are available in the elementary school that deal with that, yes.
Q And that, in fact, actually used those ads to try to tell kids why they should not smoke, is that right?
A Yeah. In fact, I mean, to be perfectly honest with you, DOC probably developed some of the first ones in 1977.
Q You don't know of any that existed before '77?
A I haven't seen any, other than -- again, other than encyclopedia volumes. I mean, it's been covered there.

MR. McCONNELL: What I'd like to do is take a brief break. Let's go off the record.

(There was a short break and discussion off the record.)

EXAMINATION BY MR. HRANITZKY:
Q I've just heard from the stenographer that you may have some trouble hearing me, so if

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

you have any trouble hearing me or if you misunderstand my question, then ask me to speak up, and I'll be happy to.

Is it your expert opinion that it was improper for members of the CTR Scientific Advisory Board to serve concurrently on the AMA-ERF advisory board?

A Is it my opinion that it was what?

Q Improper?

A Improper? I don't think I would call that improper that they did so. I think what was improper was that the AMA touted the research as independent research as to the industry, and I think to have done both was improper.

Q So, is it your opinion that, because there was overlap between the membership of the CTR Scientific Advisory Board and the AMA-ERF advisory board, that fact made the AMA-ERF research program not independent?

A That's my opinion, yes.

Q Okay. Who again were the members of CTR's Scientific Advisory Board that were also on the advisory board of AMA-ERF?

A Dr. Kotin; Dr. Seevers, Maurice Seevers;

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Browse this document online at www.industrydocuments.ucsf.edu/docs/fsjl0001

Dr. Bing, Richard Bing. I believe that was it.

Q Are you familiar with the reputations as scientists or physicians of Dr. Kotin, Dr. Seevers or Dr. Bing?

A Am I aware of their professional reputations?

Q Yes.

A In terms -- I guess in terms of what? In terms of knowing what they did and when they did it, or --

Q Well, let's break it down. First, do you know generally what their areas of specialty were?

A I've seen C.V.'s for, I think, all three of those people.

Q Okay. So, for example, do you know what Dr. Kotin's specialty was?

A Boy, that would be tough to nail down, actually, because he jumped around quite a bit. I mean, I've read his C.V. I've seen the papers that he had published as of -- I don't know what year the C.V. was, I want to say it was like around '71 or '72. So, I had seen, you know, where his research

http://legacy.library.ucsf.edu/tid/xur07a00/pdf Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/fsjl0001

dollars came from and the publications that he had, presentations that he had made. Could I state to you what he felt his area of expertise was? No, I could not.

Q Well, would it be inconsistent with what you know that he was regarded generally as a cardiovascular physician? Is that consistent with what you've learned?

A Again, I don't think I can answer that question.

Q Do you know anything about how highly, or how Dr. Kotin was regarded in the medical community in terms of how good a physician he was?

A In terms of his research?

Q In terms of his research, in terms of his practice, in terms of --

A Patient care? No, I don't think I have information that would -- that would tell me that.

Q Do you have any information of that nature regarding Dr. Seevers?

A Other than what's provided on a C.V. that I've seen, I've spoken about Dr. Seevers with a couple of people, some who liked him

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

and some who didn't. I mean, in the interviews that I did for my research on the AMA, I talked with Dr. Roy Ritts about Seevers. I spoke with Dr. Schumann and Dr. Burdette about Seevers. Dr. Burdette and Dr. Schumann I spoke with mainly because Seevers was also on the Surgeon General's committee for the '64 report, and so were those two physicians. And, again, I don't think that I was ever really looking for that kind of information. So, no, I don't think I have that information.

Q Have you ever investigated whether there was any overlap between the advisory board of AMA-ERF and peer review panels of the study sections of the NIH?

A Yeah. In fact, Dr. Kotin served -- I don't know exactly what section of the NIH it was, but he did serve in some capacity there, and some others served on the NCI's lung cancer task force. I don't remember exactly which ones they were, I'd have to go back and look it up. But, yes, I have looked to see whether or not there was other overlapping areas.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Support provided by the UCSF Library www.industrydocuments.ucsf.edu/docs/fsjl0001

Q In your view, did that fact compromise the independence of the National Institutes of Health research programs?
A Yes, it does. I really do think that it did. I don't think that they could have said they were independent either.
Q Have you done an investigation to determine whether there was overlap between the AMA-ERF board and any other biomedical research funding organization?
A Yes, I have tried to determine if there was any overlap between the AMA-ERF and the American Cancer Society and the American Heart Association. The only thing -- I didn't find any overlap on committees or boards of those organizations, I only found connections of funding. That was it.
Q Do you know if it's common practice in the biomedical research community for certain scientists to serve on multiple peer review boards?
A Yeah, I think that that happens. I'm sure that it does. I mean, I have -- I have personally served on three different peer reviews. You know, one was a journal and

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Support for www.industrydocuments.ucsf.edu/docs/fsjl0001

two were for foundation grant reviews, all at the same time. So, to answer your question, yes, I think that that's common practice.

Q Well, in your view, does that compromise the independence of any of those programs?

A Well, you're taking the word independence out of context here. In terms of was I -- was I working for one foundation and another foundation at the same time, because I was simply sitting there, did it compromise -- I mean, I never said what those foundations were even funding. So, if this foundation over here was funding a study in South America on vaccinations for children, and this foundation was studying, you know, how to do tobacco control in the state of Arizona -- and those are two actual, real examples -- that has nothing to do with whether or not those two separate projects are independent or not. They're focused entirely in different directions.

Q Do you know if there was any funding from corporate or commercial sources that went in to either of those programs you just

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

referred to when you said that you'd served on the study sections?

A Do I know if there was corporate money that went into those projects.

Q Into those programs.

A No, there wasn't. I mean, they were funded by the foundation.

Q And so, to your knowledge, there was no corporate sponsor, those foundations didn't accept any money from industry?

A No. Those foundations were endowments, I mean, they were -- technically one of them was endowed by a man who made his money from a corporation, but that's as close as it would have gotten. I mean, it was the Robert Wood Johnson Foundation, is what I'm referring to, and it was Johnson & Johnson Company, is where all the money came in. I mean, you know, you could say, well, don't they still hold stock in Johnson & Johnson and does that somehow make them not, you know, independent or make them independent or whatever. I mean, does that ruin their independence? At some point, you know, where do you draw the line? I don't know,

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Support provided by the UCSF Library www.industrydocuments.ucsf.edu/docs/fsjl0001

and I think that's what you're getting at with your line of questioning here.

You know, I think an argument could very seriously be made in taking a look at, for example, the Robert Wood Johnson Foundation, to look at what kinds of funding they do in the pharmaceutical area and to very carefully question those projects that they fund based on their own connection with the Johnson & Johnson Company.

Q Would you say that was a question of ethics, where you draw that line?

A I think that would be one part of the question, yeah, that it's an ethical question. I think it could be a moral question in some cases. I think that the business practice itself of the company would be a monitor for those kinds of questions to be -- to arise.

Q Do you consider yourself to be an expert in business ethics?

A No. I've written an article or co-authored a chapter for a textbook in medical ethics, so that's as close as I could come to that.

Q But that was medical ethics?

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Available from www.industrydocuments.ucsf.edu/docs/fsjl0001

A Medical ethics.
Q Not business ethics?
A That's correct. But oftentimes remember, and we've had a lot of examples today where medicine and business overlap. Obviously, the biggest example we've been talking about today was the AMA and the six tobacco companies, but many other areas that we discussed today where business overlaps with medicine, pharmaceutical the ads in the journals, so on and so forth. So, there have been many examples of that today that I have personally examined.
Q Would you agree that there are separate bodies of scholarship -- let me rephrase this.
A I'll help you out, let me help you out even further. In 1964, it was either March, April, May, somewhere in there, CBS did a one-hour-long documentary. It was after the Surgeon General's report was released. There was a professor of business ethics who was interviewed at length. I mean, this was long before the ten-second sound bite came in, so he was on for probably eight to ten,

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Support provided by the UCSF Library www.industrydocuments.ucsf.edu/docs/fsjl0001

maybe even 12 minutes of that whole thing, because they kept coming back to him. His name was Father Thomas Garrett from Scranton University. He's written a book on business ethics. He questioned -- he was a smoker himself at that time, and he had -- he questioned, even in 1964, the relationships between media organizations and tobacco companies, between medical organizations and tobacco companies. That's in the documentary, I mean, and pieces of that are in the book that he wrote. So, you know, again, I think even a professor of business ethics working in certain areas under that broad umbrella come across areas of medical ethics that certainly overlap.

Q So --

A I mean, I think that's probably the best example I could come up with, very concrete example of, you know -- and the book is there, it's on the bookshelf in any library, you can go get it, Father Thomas Garrett.

Q So, are you saying that medical ethics and business ethics are part of the same academic discipline, or are you saying that

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

they're separate academic disciplines and that there is some overlap between them?

A I think they're separate academic interests in terms of degrees, in terms of scholars working within, you know, departments of universities or whatever it may be, but certainly there's, you know, cases for those to overlap.

Q Are they separate in terms of the standards that are applied within medical ethics, as opposed to within business ethics?

A Well, certainly you don't have -- yeah, they're very different. In fact, those are -- those would be so different, that would be like comparing the AMA's policies on how physicians treat their patients in the examining room versus how tobacco companies treat their consumers.

Q Do you know --

A But, again, that's an area where they would, you know, overlap.

Q Do you know how the AMA chose the membership of the AMA-ERF advisory board?

A According to the letter from Dr. Ritts to Dr. Blum in 1984, the answer is no. He

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Browse this document online at www.industrydocuments.ucsf.edu/docs/fsjl0001

states in there that he wasn't exactly sure how that committee -- or who selected that committee. I think it's -- I think it's interesting that Maurice Seevers, who chaired that committee, was dean of a university, the University of Michigan, where Clarence Cook Little was President. I mean, at one point technically that was his superior at the same university, and I'm quite sure they knew each other fairly well.

Q Do you know when Clarence Cook Little left the University of Michigan?

A Couldn't have been before Maurice Seevers left. I mean, Maurice Seevers was there for a long time.

Q But you don't know what year?

A I don't know what year he left, no. I know that he was there for awhile, because I believe he was dean and then president, dean of a department and then president. I may be wrong, but that's what I recall reading about him.

Q But what you're saying -- correct me if I'm wrong here. What I thought I just heard you say is that you don't know how the AMA chose

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/fsjl0001

the membership of the AMA-ERF advisory committee?

A That is correct. In fact, I mean, time frame, you have to look at from December 9th, 1963 to the announcement of February 11th, 1964. That's when it was chosen.

Q Have you made any effort to --

A Put it this way: The House of Delegates -- I'm sorry to interrupt you again.

Q That's all right.

A The House of Delegates of the AMA never voted to approve the selection of those members of that committee. That is not on record as a resolution that was ever introduced and/or passed at the AMA. I can tell you that, because I've looked specifically for that.

Q And so you don't know how or by whom that decision was made?

A That's correct.

Q Have you made any effort to find out?

A Yes. I just told you about one specific effort. I've asked Dr. Roy Ritts. He doesn't know.

Q Have you done anything else?

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

A I've talked to -- in my interviews, I've talked to Dr. -- Dr. Ritts is probably the primary source, but I believe I broached that subject with Dr. Burdette as well, only because he attended a meeting in which those people were present.

Q Anything else that you can recall?

A Other than reading books and looking through documents, I mean -- no.

Q You testified earlier today about how some of the members of the AMA-ERF advisory committee awarded grant funds to themselves or to their institutions. What's the source of your knowledge on that point?

A Three different areas: No. 1, there's at least two documents, one of which was in the stack and one that was not, that showed where the money went; two, JAMA, early on in the project, actually published some of the universities that received funding -- in fact, I believe that was an attachment to one of the tobacco industry memos; and, third, Dr. Roy Ritts conferred all of the information, especially the information about Mickey Lemaistre from Texas Medical

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Center up -- or Southwestern Medical Center up in Dallas.

Q So, you learned that based on conversation with Dr. Rights?

A No, letter and conversation.

Q Letter and conversation?

A Correct.

Q Can you be more specific about the other sources that you just described?

A One of the documents we looked at earlier today -- I mean, if -- you want me to find it?

Q If you wouldn't mind.

A Let's see. (Referring to documents.)

Q I tell you what, let me make this easier.

A All right.

Q You testified earlier about the amounts of funds that were awarded to -- I think the example you used was Dr. Lemaistre at UT-Southwestern, is that right?

A Yes.

Q What was the source of that information?

A The same sources.

Q Okay.

A The same three sources.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Okay. Well, then I would like you to find them.
A (Witness complying.)
(There was discussion off the record.)
A Okay. One of them we did not talk about, and I apologize for that, but I do have it with me.
Q Have you got everything, so that we should go on the record? Are we on the record now?
A As soon as I started talking.
Q I wanted to make sure we were on the record.
A I apologize, because this one was not handed to me earlier today, but I had it in my stack of files, and that is a 1965, December 2nd, 1965 memo from R. D. Carpenter to Dr. H. Wakeham. It discusses a graph or an appendix of grants that appeared in the Journal of the American Medical Association, and I actually have that article. I don't know if I brought that with me or not. If you want me to look for that, I can look for that as well. But it talks about the amounts of money that were given, classified by area of research, meaning nicotine,

http://legacy.library.ucsf.edu/tid/nur07a00/pdf
Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

cardiovascular system, respiratory system, carcinogenesis, psychology, nervous system, other. Then it has it broken down by universities to the top five, or to five of them, meaning the ones that -- focusing on those who were on the AMA-ERF committee: Michigan, Indiana, Medical College of Virginia, University of Texas-Southwestern Medical School, and Wayne State.

Q Okay. Well, maybe on a break I'll ask you to take a look through your files for that JAMA article.

A Okay.

Q In the meantime, is there a reference to the cite or the month of the JAMA article in that document?

A No, there isn't here, I don't think.

Q There's no reference. Could I look at that document?

A Yeah. Hang on just one second. I don't see a date of the JAMA. I have the JAMA article in our office or here with me, one of the two. I know that I have it.

Q I'll ask you to look for it on a break.

A All right. One of the other ones that we

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

did talk about earlier was that I think it was comments on AMA-ERF program for tobacco and health from the research directors of the supporting companies. That was July 7th, 1970. That was after they had been to the May meeting in Scottsdale, Arizona.

Q Okay. That's in this set, isn't it?

A Right. And that one doesn't talk about amounts of money, that just talks about where the grants were going in terms of where they were giving their money, which was to members of the committee.

Q Okay. So, what you're saying is the source of the information you have on the amounts of money that went to individual researchers and to institutions is this December 2nd, 1965 document and the JAMA document referred to in this document?

A And this document, "Tobacco and Health".

Q Are you saying that there is a reference to the amount?

A No. I'm saying that I went through and counted the numbers of each one of the universities and tallied them up.

Q Did you come --

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Tobacco Document Center www.industrydocuments.ucsf.edu/docs/fsjl0001

A The numbers of grants.
Q Did you count the numbers of grants, or the numbers of abstracts?
A The numbers of research projects that are cited here. Each research project, it gives the title of the research project and who funded it right below it, throughout the entire thing.

MR. HOAG: For the record, when he says the entire thing, he's talking about the document called "Tobacco and Health," which here is Defendant's Exhibit 14781.

Q (By Mr. Hranitzky) And that's what we've been referring to as the 1978 report of the AMA-ERF?
A Correct.
Q Right?
A Correct.
Q Okay.
A And I did make a effort to get more information about the amounts of money from Dr. Roy Ritts. He knew -- really only he knew in general he could corroborate what that document says, that document meaning

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/fsjl0001

the -- what date is that?

MR. McCONNELL: December 2nd, 1965.

THE WITNESS: Right.

A He couldn't give me exact amounts, however. He told me -- I mean, you know, this is all what you guys say, speculation, hearsay? I don't know, but he told me -- I mean, I have it tape recorded, not that that matters either. But he told me that Dr. Charles Lemaistre made off like a bandit. When I asked him what did that mean, he said he felt that in the first four or five years or three or four years, I believe is what he said, it was about $2 million that went to UT-Southwestern Medical Center.

Q (By Mr. Hranitzky) Do you know if the AMA-ERF, or the AMA, was criticized publicly for funding the members of its own board during this time period, 1964 to 1978?

A That's a good question. I don't think I've seen anything where they were criticized publicly, no. I know that they were criticized within the AMA in terms of membership and some of the resolutions that

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

were introduced, but I don't -- I don't believe that I've seen any public criticism of the AMA. But, again, they didn't publish their first report, public report, on the project until 1968.

Q So, to your knowledge, there was no -

A Other than, I mean, they did brief like updates that were small, half-page or one-page in JAMA under their news section, but -- in fact, there was a discussion about whether or not they should even publish like annual reports for the project, which they had decided not to do. And that's why you have such a huge final report in 1978, is because they didn't -- they didn't publish them.

Q By the way, going back to the 1978 report, you said that you counted the number of grants that were awarded to each of the scientists on the AMA-ERF advisory board?

A I went through every single one of them.

Q Does the number of grants that they were awarded necessarily tell you anything about the amount of money they were awarded?

A Well, if you -- yes, because the documents

http://legacy.library.ucsf.edu/tid/xur07a00/pdf Digitized by the Internet Archive http://www.industrydocuments.ucsf.edu/docs/fsjl0001

that discuss this between the AMA and the industry talk about the average amount of the grants. I don't remember exactly what that is, and that's in one of these documents, and I think that if you did take an average, you could probably use that as a multiplier.

Q But that's just an average, that doesn't tell you the amount of each of the specific grants?

A No.

Q Right?

A And the question, one of the questions raised when this was put out, one of the questions that was raised in the House of Delegates was, "Where is the final accounting? How much were these grantees awarded?" That was a criticism. The report had already been published.

Q And have you seen any record that accounts for how much each of these grantees were awarded?

A No, because in his deposition -- I don't know what case it was in, but Dr. Charles Macenski from the AMA-ERF said that there

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Document from www.industrydocuments.ucsf.edu/docs/fsjl0001

was no record when he took over that position. When he became director of the AMA-ERF, there was no record, No. 1, of how the grants were decided upon, the application process, nor an accounting of the specific amounts of money handed out to the grantees. And I have that deposition here with me, if you want to look at it.

Q Have you ever investigated --

MR. HOAG: Can we just for one second -- I need to clarify something.

MR. McCONNELL: Go ahead.

MR. HOAG: This "Tobacco and Health" document that I previously said was Defendant's Exhibit 14781 --

MR. McCONNELL: It's also Defendant's 21779.

MR. HOAG: Okay. These are both --

MR. McCONNELL: It's the same document. Just typical efficiency in this case, we marked it twice.

MR. HOAG: We've done that a few times, too. So, it's a Defendant's exhibit in Engle with two different

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

exhibit numbers?

MR. McCONNELL: Right.

MR. HOAG: And the other one you said was --

MR. McCONNELL: Right.

MR. HRANITZKY: It may also be a Plaintiffs' exhibit.

MR. HOAG: That's true.

MR. McCONNELL: I think it probably is.

MR. HOAG: That's true.

Q (By Mr. Hranitzky) Okay. Have you ever investigated whether the NIH awards grant funds to members of its peer review panel?

A I think that there was -- there was a committee formed a couple of years ago, I don't know exactly what year, to look at the process, to avoid conflicts of interest in handing out grants from NIH.

Q Do you know if NIH developed any policy on awarding --

A I don't know what the -- what the results of that committee were.

Q Just for the sake of the record, just let me finish my question.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Digitized by the Internet Archive www.industrydocuments.ucsf.edu/docs/fsjl0001

A Sorry.
Q Do you know if NIH developed any policy on the award of grant funds to persons who were concurrently sitting on an NIH study section?
A I'm not aware of a policy that they've developed.
Q Have you ever investigated whether the American Cancer Society has awarded grant funds to people who sit on its peer review panel, study section?
A I know that they have. I haven't launched a formal investigation, no.
Q So, aside from just knowing that --
A They have a board --
Q -- it has happened?
A It has happened, yes.
Q You don't know of any specific incidents?
A Dr. Cuyler Hammond.
THE REPORTER: I'm sorry, Dr. --
THE WITNESS: Cuyler. I don't know how to spell that.
MR. McCONNELL: C-u-y-l-e-r.
THE WITNESS: C-u-y?
MR. McCONNELL: L-e-r, yeah.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Browse this new web at www.industrydocuments.ucsf.edu/docs/fsjl0001

A That's what I thought. That's one example that comes to mind immediately.
Q (By Mr. Hranitzky) Do you know if the American Cancer Society has a policy regarding the award of grant funds to members of its study sections or peer review panels?
A I don't know if they do or not.
Q Do you know if CTR had a policy regarding the award of --
A Apparently they did not during -- sorry.
Q Please let me finish my question.
A Sorry.
Q Regarding the awarding of grant funds to members of its scientific advisory board?
MR. HOAG: Now, do you mean at any time, or are you on a time frame?
Q (By Mr. Hranitzky) At any time.
A At any time, I don't know. I know that it was very obvious that they did not have a such a policy during the time frame between 1964 and 1972.
Q Well, do you know --
A '71, excuse me. '64 to '71.
Q Do you know if the NIH had such a policy

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Document from www.industrydocuments.ucsf.edu/docs/fsjl0001

during that time period?
A I do not.
Q Do you know if the American Cancer Society had such a policy during that time period?
A They did not have such a policy, because I just cited an example where Cuyler Hammond received money, and that was during that time period, from the American Cancer Society.
Q Do you know if the AMA-ERF had any such policy?
A Again, obviously -- it was obvious that during that time period, they didn't.
Q Is it possible they had a policy and it wasn't enforced?
A That's a very good policy (sic), yes. It could have been -- that could have been the case for all of the organizations that you just mentioned, that they had a policy and it was just not enforced.
Q It's also possible that they had a policy that a member of the advisory board could apply for grant funds from the organization but just not participate in the deliberations to determine whether he or she

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/fsjl0001

would be awarded funds; is that right?
A That could have been the policy. (The witness nodded his head.)
Q You just don't know?
A I don't know.
Q So, you have no basis to compare the AMA-ERF practice of awarding grant funds to members of its advisory board to the common practice in biomedical research during 1964 to 1978?
A That's correct.
MR. HOAG: I'm going to object to the form of the question. Go ahead and answer.
A I think, if I understand your question, that's correct, I don't.
Q (By Mr. Hranitzky) You testified earlier today about cofunding of projects by both CTR and AMA-ERF, right?
A (The witness nodded his head.)
Q Have you ever investigated the records from the NIH to determine if the NIH commonly sponsors research projects that are concurrently being sponsored by another research organization?
A There are a number of departments and

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Support provided by the UCSF Library
http://www.industrydocuments.ucsf.edu/docs/fsjl0001

divisions within NIH that encourage you to seek additional funding from other sources, so the answer to that is yes, it's a common practice at NIH to --

Q Is there any -- I'm sorry, go ahead.

A To provide funding to projects that are receiving funds from other projects.

Q Do you know if it's a common practice within the biomedical research community generally for grant organizations to cofund projects also being funded by another organization?

A I have served as a consultant to a number of foundations that encourage this same sort of practice.

Q Is there anything improper about that, in your expert opinion?

A Is there anything improper about it? No. I think that -- I think that's proper until you claim -- you try to claim that you're independent from some faction that you're receiving the funding from. In other words, if you're the Robert Wood Johnson Foundation, and Mr. Hoag is the Thrasher Research Fund, and I am applying for independent research that you want to keep

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Digitized by www.industrydocuments.ucsf.edu/docs/fsjl0001

independent as the Robert Wood Johnson Foundation, and I get funding from both of those, and you and I agree to maintain that that is independent research, and we don't tell Mr. Hoag, the head of the Thrasher Research Foundation, who's also giving me money, that -- that I've gotten money from you as well, or we don't tell the public, we tell the public that this is completely independent, but we don't tell the public that I got money from Mr. Hoag at the Thrasher Research Fund. The example I'm trying to make is you cannot -- you cannot be and claim to be independent publicly when your daily business practice behind closed doors that you're not telling the rest of the world about is such that your funding -- your people are shared, your funding is shared, your money is shared, your sources of information are shared. I don't think you can claim to be an independent project.

Q Do you know how much members of the AMA-ERF advisory board were paid to review grant applications?

A You're assuming that all they did was review

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Browse this new web at www.industrydocuments.ucsf.edu/docs/fsjl0001

grant applications.
Q Well, let's start with review of grant applications.
A To be honest with you, I don't know what their job descriptions or their consulting descriptions were for the AMA-ERF, nor do I know what they were paid, nor do I know the amount of time that they may have spent on that project, simply as administrators of the project.
Q So, you don't know how much they were paid in any capacity outside of whatever they may have received in grant funds from AMA-ERF; is that right?
A That's correct.
Q Do you know how much members of the NIH peer review panels were paid to review grant applications?
A I think it probably varies depending on the department that they work in. Certainly, there's more weight and importance put on one department over others, based on the amount of money that they've received from Congress. So, to answer your question, no. That would be actually very simple to look

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Support provided by the UCSF Library
http://www.industrydocuments.ucsf.edu/docs/fsjl0001

up, because I'm sure that's all public record, but I don't know what that is.

Q But to your knowledge, they are compensated for that?

A Oh, yes, yes.

Q Do you know how much the members of CTR Scientific Advisory Board were paid?

A I do not.

Q You testified in the second deposition you gave in this case about the connection between the AMA's relationship with the tobacco industry and its position on proposed labeling legislation. Do you recall that?

A I don't recall it at the moment, but if you'll refresh my memory, I may.

Q Well --

A I mean, I don't remember exactly what was asked and what I answered. I don't know.

Q Let me ask you this: Do you have an opinion as to whether there was some connection between the AMA's relationship with the tobacco industry and its position on proposed labeling legislation?

A That's my opinion, yes.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Okay.
A My opinion is based on the fact that that statement that was made to the Federal Trade Commission did not go through proper channels at the AMA. It was done on a very quick, short basis, and they had the chance -- they knew that that -- that those hearings were forthcoming and that they could provide testimony. You do not have to be invited to provide testimony or to provide a letter to the FTC to be entered into the records, and they knew of that before their 1963 meeting in December. So, that could have been an issue that was discussed and decided upon at that time, any statement that would be made to the FTC.
Q You said that statement. Can you be more specific? What statement are you referring to?
A The statement that was the -- the February 28th, 1964 letter from Dr. Blasingame to the FTC that we talked about.
Q That's identified -- just give me the Plaintiff's exhibit number of the document.
A 5488.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Buttons Copyright www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Just so we have it in the record. Was the AMA criticized publicly at the time for that?
A Yes, they were.
Q Do you know where that debate occurred? Meaning, was it in -- did it appear in the newspapers, like radio, television? Was it widely publicized, not widely publicized?
A The debate occurred in JAMA. They actually published some of the hearings that later transpired in Congress with regard to their testimony to the FTC, and, as we've mentioned, Senator Frank Thompson was certainly one of those people, but there were others. It was covered in major newspapers across the country, the New York Times, it was covered in Advertising Age. Even some of the advertising trade journals were covering it. It was covered in some of the publications we looked at earlier today aside from JAMA. I think it was Medical -- American Medical News, AM News. So, it was covered widely. The criticism was covered widely.
Q Are you aware of any actual evidence that

http://legacy.library.ucsf.edu/tid/xur07a00/pdf Support provided by the UCSF Library www.industrydocuments.ucsf.edu/docs/fsjl0001

the AMA's position on the proposed labeling legislation was affected by any act of the tobacco industry?

MR. HOAG: Object to the form of the question.

A Actually, that was already asked earlier, and I already said that I think one would be naive to assume that that money, $10 million, that had just been received didn't have some sort of influence on the language that was used in their testimony to the FTC.

Q (By Mr. Hranitzky) But that's an inference you're drawing from the circumstances; it's not based on an actual piece of evidence to tie the AMA's decision to any act of the tobacco industry, is that right?

A Again, and I've gone over the time frame about when decisions were made about statements, formal statements of the AMA. This was not a formal statement of the AMA. That was a major discussion by the House of Delegates at their next meeting, and publicly -- they were criticized publicly by even their own members, I mean, and some of the delegates. So, you know --

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Well, are you agreeing or disagreeing with me that it's an inference, it's not based on an actual piece of evidence demonstrating that the AMA's decision was caused by or influenced by some act of the tobacco industry?

MR. HOAG: I object to the form of the question. It's been asked and answered.

A I think that when I said one would be naive about the influence of the money, I think one would be stupid to assume that somebody would write down in some document somewhere, that "I wrote this this way in the manner that I did and submitted it to the FTC without the House of Delegates approval because the tobacco companies are giving us money right now and I don't want to jeopardize that." I think one would be stupid to assume that that would ever be done.

Q But you've never seen that document, have you?

A I don't believe it would exist. If it does, it's been destroyed by the AMA or somebody

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Browse this item online at www.industrydocuments.ucsf.edu/docs/fsjl0001

else. You know, I mean, that's a good point. I think it is important to -- you know, of all of the efforts that have been made through litigation, through my own efforts, through efforts of other researchers, efforts of delegates and members of the AMA who have sought this kind of information from the American Medical Association, and for them to have destroyed, you know, everything is pretty amazing, in my opinion.

Q Were you the first person to draw the inference that there may have been some connection between AMA's decision on whether to support the proposed labeling legislation and some act of the tobacco industry?

MR. HOAG: Object to the form of the question, it mischaracterizes his prior statements, prior testimony.

A Let me repeat it back to you, see if I understand what you're asking. Was I the first person to make an inference?

Q (By Mr. Hranitzky) To draw this inference.

A But you're asking me again if I'm drawing an inference, and again what I'm trying to tell

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

you is explain the facts as we know them, and I'll leave it at that. You're asking me -- what I'm trying to do is give you the facts that we went through earlier today, all right? And that includes either the AMA having made statements or not having made statements at certain points in time, and then the fact that they did receive money from the tobacco industry, okay? That's what I'm trying to do.

Q Let me make this easier.

A Okay.

Q Were you the first person to reach the conclusion that you've reached?

MR. HOAG: Object to the form of the question.

A My opinion about why the AMA submitted the letter and the manner in which it was submitted, my opinion about that has been shared with many people who have written about this issue.

Q (By Mr. Hranitzky) So, you weren't the first person to ferret that out?

A Well, we've already talked about Representative Frank Thompson, the U.S.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Congress.

MR. McCONNELL: You don't want to end up like him.

THE WITNESS: I do not want to end up like him, I can agree on that statement.

Q (By Mr. Hranitzky) Okay. One little thing, and then I'll hand it over to Mr. McConnell again, and then if you wouldn't mind, I'm going to ask you for that JAMA article.

A That's fine.

Q Going back to this June 24th, 1974 memo from Spears to Judge, the one with the redaction, do you recall what I'm talking about?

A Yeah, I know exactly which one you're talking about.

Q Plaintiff's Exhibit 259. Here, I have a copy.

A No. I know why I couldn't find documents, because I left half of the stack on the floor. I'm sorry. Okay.

Q Is this document part of the basis of your opinions regarding the tobacco industry's relationship with the AMA-ERF?

A Yes.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

MR. HRANITZKY: That's it for now.
MR. McCONNELL: All right. If you need a break, let me know. Otherwise, we'll get right back into it.
THE WITNESS: What time is it?
MR. McCONNELL: It's 4:26.
THE WITNESS: How much longer do we have? Because I may end up taking a break.
MR. McCONNELL: Probably until 5:30.
THE WITNESS: I'll take a break.
MR. McCONNELL: Okay.
(A short break was taken and Exhibits Nos. 1 and 2 were marked for identification.)

EXAMINATION BY MR. McCONNELL:
Q I've marked as Exhibit 1 to this deposition a document that was actually provided to us by Mr. Solberg. I put it in front of you, Mr. Solberg. It's the Carpenter-Wakeham memo dated December 2nd, 1965. Do you see that?
A Uh-huh.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Q And this is a document that you rely upon in reaching your opinions regarding the AMA-ERF, is that right?
A Yeah.
Q There are dollars amounts on the first page, listing the categories or classifications of the grants, is that right?
A Right.
Q And if you add it up, you'll see that 54% of the grants from the AMA-ERF pertain either to the cardiovascular system or the respiratory system, is that right?
A That's correct, at the time that this is calculated.
Q Do you know if it changed appreciably after this?
A Yes, it did.
Q In what way?
A Much more -- in fact, roughly 50% was -- 50% of the grants, I can't say necessarily 50% of the money, was devoted to studies on nicotine.
Q All right. The last paragraph of this first page --
A By the way, it just may be that I think, in

http://legacy.library.ucsf.edu/tid/nur07a00/pdf
Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

terms of the amount of effort, dollar figures in certain kinds of research may or may not mean something. The research investigating nicotine, for example, may be far less expensive than respiratory system or cardiovascular system investigations.

Q Or it could be the other way around, isn't that right?

A It could be the other way around. I'm just making the statement that the number of grants, about 50% of them -- let's see. By 1970, this is certainly before that, so. . .

Q Are you done?

A Yeah.

Q Let's look at the last paragraph on this page. It says, "The emphasis on nicotine might seem to be out of proportion because so much work has been done on nicotine in the past. Careful study of the proposals indicates that new methodology will be employed, especially in the problems of determining blood flow." Do you have any basis to challenge that statement as being inaccurate in any way?

A No, I don't.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Next page, Mr. Carpenter says, carried over from the prior page, "The large percentages of effort in the cardiovascular and respiratory systems indicate the importance of those two disease areas. Very little is actually known about the effect of cigarette smoke on these systems at this time, and the committee obviously feels that these are the two major systems about which more knowledge is needed."

A That's right.

Q Do you have any basis to challenge the accuracy of that statement?

A Keep reading. "It is interesting that only 2% of the effort has been allotted to carcinogenesis," which was the primary goal, stated goal and objective of what they were going to do.

Q All right. That paragraph as a whole, you read. Do you believe it's accurate?

A No, I don't. I don't agree with the statement that very little is actually known about the effect of cigarette smoke on the systems at this time. This is in 1965. It's after the Surgeon General's report was

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Document hosted at www.industrydocuments.ucsf.edu/docs/fsjl0001

released.
Q Well, when the Surgeon General's report was released in 1964, did it conclude that cigarettes caused cardiovascular disease?
A It concluded that it caused lung cancer in males, that's respiratory system, and emphysema. That's two that affect that very system. I can't agree with a statement that says very little is actually known about the effect of cigarette smoke on these symptoms -- systems.
Q Systems.
A Sorry.
Q Well, let's isolate cardiovascular. Would you agree the statement is true insofar as cardiovascular is concerned?
A I wouldn't say very little is actually known. I would say that they had -- the Surgeon General's committee -- in fact, this is stated in the Surgeon General's committee or report, that they did not include a cause-and-effect relationship at that time between cigarette smoking and cardiovascular disease. They showed a statistical relationship between the two at that time.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf
Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Was it true or was it not true that in 1965 very little was actually known about the way, the mechanism by which cigarette smoke affected cardiovascular and respiratory systems?

A I just answered that question. That's the same question you just asked.

Q I'm asking it different. I'm focusing not on the epidemiological evidence, but how much was known about the way, the mechanism by which cigarette smoke affected those systems.

A I mean, you're asking me to tell you what's in the Surgeon General's report. I don't know off the top of my head. I'll put it out and we can read it, but in the conclusions of the Surgeon General's report in 1964, there was a statistical association between -- that linked cigarette smoking to cardiovascular disease. That's my answer.

Q All right. My question is: Do you know -- if you don't know, just feel free to say it, but do you know whether or not the Surgeon General's report in 1964 indicated that much was known or little was known about the way,

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

the mechanism by which cigarette smoke affected the cardiovascular and respiratory systems?

A I don't remember --

MR. HOAG: Let me object to the form of the question. Go ahead.

A I don't remember what exactly the wording is in the Surgeon General's report outside of its major conclusions.

Q (By Mr. McConnell) The last paragraph on this page says, "I believe the AMA program is well designed, but it does reflect the loss at which the medical profession finds itself when it considers the effect of cigarette smoke on respiratory and cardiovascular diseases." Do you have any reason to challenge the accuracy of that statement?

A This is an opinion statement made by somebody who works for a tobacco company, Philip Morris. I mean, so that's a person, that's an employee of a cigarette company who's saying that he doesn't feel that the medical profession knows anything about studying the effects of cigarette smoke on

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

those two systems.
Q Let me put it a different way: Do you have any basis to challenge the sincerity of that statement by Mr. Carpenter?
MR. HOAG: Object to the form of the question.
A Again, it's an opinion about the medical profession as a whole. This is someone who's stating an opinion, I mean, about the medical profession.
Q (By Mr. McConnell) Do you have any basis to challenge the sincerity of that opinion as expressed by Mr. Carpenter?
MR. HOAG: Let me object to the form of the question, and it's been asked and answered.
A My feeling is that he is sincere. He's writing to the guy, his own boss.
Q (By Mr. McConnell) He goes on to say --
A That doesn't mean that it's -- that he's documented anything here. He just -- he may be sincere about his own opinion.
Q Does he go on to say that they apparently -- they, being the medical profession -- "They apparently feel that sufficient effort is

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

being expended on carcinogenesis by other agencies and have thus de-emphasized that problem"? He does say that, right?

A He does say that.

Q Is that an accurate or inaccurate statement?

A That's an accurate statement based on the meetings that they had with the AMA-ERF. They told me them that. The AMA told them that very thing in 1968 and in 1970.

Q Now, did you mention in your testimony just a little while ago that you actually had a tape recording of an interview with Dr. Ritts?

A Yes.

Q Does that tape recording discuss the AMA-ERF?

A It does.

MR. McCONNELL: I'm going to make a formal request now for a copy of that tape recording.

Q And my next question is: Do you know, as you sit here today, what cigarette ads you intend to discussion in your testimony on Tuesday?

A As I sit here today, what cigarette -- well,

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Support provided by: www.industrydocuments.ucsf.edu/docs/fsjl0001

the ones that are sitting here in front of me, and the ones that I gave you to make copies of.

Q Which I hope we have. And that selection of ads, was that selection made by you or by a lawyer?

A Of all of the ones that we're talking about here?

Q The ones that you intend to use in your testimony.

A I could provide a lot more actually, but, I mean, at some point you've kind of -- you've got to limit yourself. These have been selected by me.

Q My question is: The selection that you intend to use for your testimony --

A Right.

Q -- that selection is by you, not by a lawyer?

A That's by me, that's right.

Q What I'd like to do first is put in front of you Plaintiff's Exhibit 5426-A.

A That's too small.

MR. HOAG: That copy has been reduced for some reason. It's very

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Support provided by the UCSF Library www.industrydocuments.ucsf.edu/docs/fsjl0001

hard to read. We have one that's not reduced, so it's easy to read.

Q (By Mr. McConnell) Do you have that in front of you? Well, it's 5426. I think A is the first ad, and that it progresses. Do you see that?

A Yes.

Q Are these cigarette ads that you have collected?

A This may be.

Q Is there some way you can tell if they were collected by you, as opposed to someone else?

A No, there isn't. I mean, we probably have this ad in our collection. In fact, I've seen the ad before, so I'm quite sure that we have this ad in the collection.

Q Now, these ads have been taken out of their context, correct?

A That is correct.

Q Obviously, they're not in the magazine that they come from, or wherever it is they come from, correct?

A That is correct.

Q In terms of evaluating their effect on

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

consumers, that makes them somewhat less useful, doesn't it?

MR. HOAG: Object to the form of the question.

A It makes it -- I don't know that it makes it less useful. It makes it harder to determine when it was that they appeared.

Q (By Mr. McConnell) Some of these ads do, in fact, indicate the date on which they appeared, correct?

A Some do, yes.

Q Most do not, correct?

A Most do not, that is correct.

Q What I'm going to ask you to do, let's go through 5426, let's go through the ads, and I'm going to ask you for these ads to tell me the date in which the ad appeared and whether it appeared -- how it appeared in the state of Florida, if it appeared in the state of Florida, if you know. Okay? So, for example, 5426-A is the Camel ad, "Nothing like this in the Army," correct?

A Yes, I see that.

Q What's the date of that?

A It says 1945 on the page itself.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Oh, it's handwritten. Do you see that?
A Yes.
Q Who handwrote it?
A I don't know. Somebody who made a photocopy of it, I would assume.
Q How do you know that 1945 is correct?
A I don't.
Q Did this ad appear in the state of Florida?
A Yes. This was in Time magazine.
Q How do you know this was in Time magazine?
A Because I have the original in my office, and I can tell you exactly -- I can't tell you the date of the Time magazine, but I can tell you it's on the back cover of the Time magazine.
Q And the back cover ad will be the same for Time magazine throughout the country? Do you know that?
A In the United States, sure. Yes.
Q Let's look at the next ad.
A 1945 it was.
Q The next ad is a Chesterfield ad, correct?
A Yes.
Q And that appears to have -- is that 1938?
A Yeah.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Q All right. And did that ad appear in the state of Florida?
A I don't -- I can't tell from the context of which it's presented to me here.
Q Look at the next one, please. Camels ad. What year did that appear, and did it appear in the state of Florida?
A Would it help if we were going to do these, that these were then presented in their context? I mean, that can be arranged, is all I'm saying.
Q Can it be arranged in the next 45 minutes?
A No. I assume you're going to go through each one of these, and there's going to be practically no way to tell you exactly what publication it came from, the date of that publication.
Q What is it you propose to do, then, in terms of going through the context? You said would it help to go through the context. What do you mean by that?
A To put it back in its original -- I mean.
Q You can't do that right here, can you?
A Not at this moment, no.
Q You can't do it for the sake of this

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

deposition, is what I'm asking?
A Correct.
MR. HOAG: The representative sample that he selected today that's over there in the pile, we can do that for today. These are readily available to anyone who has access to magazines, and he has the original copies, which you can look at prior to trial, if there's a question of authenticity and whether these are in Florida or not. That can be done prior to trial, but there are originals here that you can look at as representative samples.
MR. McCONNELL: Those haven't even been marked as Plaintiffs' exhibits, have they?
MR. HOAG: As I said, you can look at the representative samples.
MR. McCONNELL: I don't care about representative samples, I care about the exhibits to be used at trial.
MR. HOAG: I know you don't care about representative samples, but they're here, if you want to verify

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Browse this item online at www.industrydocuments.ucsf.edu/docs/fsjl0001

that these type of ads were used in Florida, in a national magazine.

Q (By Mr. McConnell) Mr. Solberg, just so it's clear, I'm not asking about types of ads. You understand I'm asking about the specific ads?

A Correct.

Q All right.

A Sorry. I mean, to help you speed things up just a little bit here.

Q Sure, that's fine.

A I can tell you right now that I won't be able to go through this stack of ads the way in which they are sitting here presented and tell you the date and the publication in which they appeared. I can give you a time frame for some of these ads, probably most of these ads, in terms of dates, and I can probably give you, on some instances that I will remember, their actual publication, but it's going to be probably very few, because I'd be literally trying to rely on hundreds of thousands, if not millions, that I have looked at that we hold in the archive in their original context.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Support https://www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Do you anticipate that your presentation on Tuesday will be a thematic presentation when you discuss these ads?
A That's correct.
Q What themes do you plan to address?
A Well, some of the themes I've already mentioned. The use of doctors in cigarette advertisements, health claims made in cigarette advertisements, and I already went through some of the brand name slogans, we've already talked about that. Cigarette ads appearing in medical journals, concurrent themes in medical journals and in the lay press.
Q What do you mean by that?
A Those would be cigarette ads for various brands that appeared in medical journals and pretty close simultaneously in the lay press, but most -- some of them originated first in the medical journals. Research citations in cigarette advertisements. I think that pretty much includes the themes that I'll focus on.
Q What brands used doctors in their ads?
A Besides Camel?

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Right.
A Chesterfield has used doctors. L&M has used doctors. Well, I mean, I might as well just look through here, because they're sitting in front of me.
Q If you can find them in this exhibit, that's fine.
A Philip Morris had used doctors.
Q Where did Philip Morris use doctors?
A In medical journals.
Q Did Philip Morris use doctors in any ad that did not appear in a medical journal?
A They used the word "doctor."
Q In what ads?
A In the ads that didn't appear in medical journals.
Q What else was in the ad besides the word "doctor"?
A Example, 5426-F, medical authorities.
Q 26-F. What distinguished doctors found on comparing cigarettes, correct? Is that the one I've got, 5426-E? I'm sorry, I'm looking at the wrong one.
A Look at them both then.
Q Yeah.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf
Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

A Medical authorities and doctors, both. I would say at one time or another pretty close to all of the major brands, Old Gold, Chesterfield, L&M, Kool -- did you know that the penguin used to wear a stethoscope? I guess he was a penguin doctor. I think all of the major brands at some point used a doctor, the major brands meaning major brands at the time.

Q Now, with respect to 5426-E and F that you just referred to, what year or years did these ads appear?

A I don't -- I don't recall.

Q How did these ads appear in the state of Florida?

A That's a good question. I don't recall what publications these appeared in.

Q Do you know if any member of the Engle class ever saw these ads?

A Do I know if they did?

Q Yeah.

A Not definitely, no. I don't know that they definitely saw these ads.

Q Now, use of doctors then, you said Camel?

A Remember that at the same time these themes

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

were appearing on television in the 1940s and 1950s.

Q You said Camel, L&M, Chesterfield, is that right?

A Chesterfield.

Q Any others? Any other brands that used doctors?

A Philip Morris I mentioned.

Q The example you just gave.

A Luckies, Old Gold. Those are the ones that I remember at the moment. Viceroy. Actually, that was dentists, but I would include them in the doctor category since they are referred to as doctors. Okay.

Q Have you seen any evidence that demonstrates what the effect of these ads using doctors was on the consumption of cigarettes for those brands?

A Have I seen any evidence that relates to the consumption of cigarettes?

Q Yeah, whether --

A As a result of these ads?

Q Exactly.

A No, I have not seen that kind of information.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Browse this set at www.industrydocuments.ucsf.edu/docs/fsjl0001

Q The second category was health claims. What health claims do you have in mind?
A There's a lot of them. Anything that refers to mildness, irritation of the nose, throat, any other organ, clinical testing, government testing, citations of medical journals or medical reports or scientific reports, those words that are used. Health care professionals. I mean, there's others, obviously, out there, nurses and whatever. Again, ads that appeared in medical journals. Methods of treating tobacco in order to achieve certain promoted allegations -- promoted health claims, I mean.
Q At the time these ads came out with the health claims that you've just described, cigarette manufacturers were criticized for these ads, weren't they?
A When these ads came out, they were criticized?
Q Right.
A Criticized by who?
Q The AMA.
A No, that's wrong.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf
Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Have you ever seen an editorial in JAMA entitled "Cigarette Hucksterism"?
A That was in the 1950s.
Q You're talking about ads that are prior to the Fifties?
A Yeah. I'm going back to the 1920s and 1930s. You said when these things came out.
Q Well, some of them came out in the Fifties.
A These, I can tell you right now, are from probably the 1940s right here. These two Philip Morris ads right here are probably from the 1940s. Some of these Luckies are from much earlier than that, going back into the Thirties. Some of these are from the late Forties and early Fifties, so there's a range in here.
Q All right. And the range continues into the 1950s, correct?
A Yeah. I mean, there's Thirties, there's Forties and there's Fifties in here, yeah.
Q And there was a JAMA he editorial in the Fifties attacking cigarette hucksterism, correct?
A Specifically, yeah, that was attacking Kent cigarettes, Lorillard Tobacco Company. But

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stream from www.industrydocuments.ucsf.edu/docs/fsjl0001

in order to understand why they attacked, you have to remember that that attack on Lorillard was because they used the American Medical Association's name in their advertisements in lay publications without permission, and up until that time -- in fact, that was one of the primary reasons that they decided to discontinue advertising in their own journals, cigarette advertising in their own journals. So, there's a very complex issue here. You have Morris Fishbein, who was the editor of JAMA from 1920 until 1949, when they booted him out. You have him leaving, going to -- my understanding is that he had some role in helping to establish the Tobacco Institute -- Tobacco Industry Research Council, and he was a consultant to Lorillard Tobacco Company. Now, he's denied in his own book and in his -- which is his autobiography, and in public statements about having anything to do with the design of the Kent cigarette ads, because he was there, working for Lorillard as a consultant when those ads appeared and when this whole thing happened.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Browse this new web at www.industrydocuments.ucsf.edu/docs/fsjl0001

But I think it's important to show the context in which that article on cigarette hucksterism was written in JAMA.

Q Is it your opinion that Morris Fishbein was a shill for the tobacco industry?

A Was a shill? I don't know if I would call him a shill. I think that he was -- I mean, he was kicked out of the AMA, and he says it in his own book, I think, to a certain degree because he was too big for his own britches. But, again, I told this at the very beginning of -- not the very beginning, but earlier today I testified that one of the highest people -- not the highest, but one of the highest at the AMA is the editor of JAMA, and the reason for that is No. 1 source of revenue, and that's what Morris Fishbein was at the time that he was.

Q Is it your opinion that Morris Fishbein collaborated with the cigarette industry in any way?

A Sure. He left the AMA to go work for them.

Q In fact, the AMA has --

A And he took their ads for 20 years, from '34 until '54.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Q And the AMA has created a fellowship in his honor, isn't that right?
A Yes, they have, the Morris Fishbein Fellow.
Q Can you name anybody who had that fellowship?
A Well, the current editor had it, Lundberg. Dr. Alan Blum had it. Actually, I saw a list, not recently, of the last like 20 years of that, or whatever it was, but I couldn't tell you all of them, no.
Q Back to these ads with the various health claims, you're saying that these ads span basically the Twenties through the Fifties, is that right?
A Right.
Q Why don't you just tell me for the Twenties what the health claims are that you have in mind.
A Well, doctors were actually used in pictures, images of doctors and nurses, both in the 1920s. Saturday Evening Post in 1929 published both of those images actually, a doctor for Camel and a nurse for Camel. The word "fresh" was used. The Lucky Strike campaign talked about "Reach for a Lucky

http://legacy.library.ucsf.edu/tid/nur07a00/pdf
Support provided by www.industrydocuments.ucsf.edu/docs/fsjl0001

instead of a Sweet." In fact, I believe that campaign started in the late Twenties. Those are the ones that come to the top of my head right now.

Q Is it your opinion that if a product uses the word "mild" in its ad, that it's making a health claim?

A You'd have to look at where the word originated for "mild," and it originated from Lucky toasting and using ultraviolet rays on its tobacco products in order to make it mild. So, yes. You know, the evolution was you say, oh, well, it doesn't cause throat irritation, doesn't cause a cough, it doesn't hurt your throat, doesn't -- you know, whatever, aids your digestion, but those words were introduced, and then when they couldn't use them, some of those claims anymore, a few of the words remained, like "mild." I'm not saying that every time the word "mild" appears in a text in a cigarette ad that means it's a health claim. I'm just saying that oftentimes that is what they are referring to.

Q Other products also use the word "mild" in

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

their ads, correct?
A Sure.
Q That's also true with the word "light," right?
A That's correct.
Q And you don't say the word "light" always is a health claim, do you?
A Well, that's a good question. If you're talking about weight, you're talking about physical weight of a product, no. If you're talking about weight in terms of the human being and the result of a product on a human being's weight, then yes.
Q You think Miller Lite was making a health care?
A You better believe it. You better believe it, yep. Won't fill you up. Sure, it's a health claim.
Q Have you ever seen any --
A Did you know that there's no fat in Miller Lite compared to regular Miller? And that's where the word "Lite" originated from in beer commercials, that there was no fat, only carbohydrates.
MR. HRANITZKY: Is there fat in

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

regular beer?

THE WITNESS: You better believe it. Better look at those grams of fat in a regular Miller.

Q (By Mr. McConnell) You just come to these depositions and you learn the most wonderful things. Have you seen any evidence demonstrating the impact on consumer sales of these ads with the health claims that you've been talking about?

A I have not seen evidence of consumer impact. Are you talking about the effectiveness of the advertising campaign?

Q Right.

A On consumption of cigarettes?

Q Exactly.

A I have not seen that evidence.

Q I actually asked you about the health claims in the Twenties. Why don't you just take me through the Thirties, Forties and Fifties, if you can?

A Well, some of them obviously carried into the Thirties. In fact, the Thirties were probably, I think, even more of a birth of health claims. I mean, technically they go

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

back to the turn of the century, because there were various themes on the trading cards they used to advertise cigarettes, and many of those themes were health -- I mean, everything from how to perform CPR to how to save someone from drowning. Those are all obviously health claims. My favorite trading card that I have is a guy wearing a gas mask, and it shows how to put the gas mask on. That was like during the 1930s or whatever, during World War I. So, I thought that was interesting.

So, into the 1940s, we've already talked about the "More Doctors Smoke Camel" campaign, which I believe, even though they used images of doctors in their advertising in the 1920s, that campaign started in the mid-1940s. Philip Morris, throughout the 1940s, used a -- not throughout, it was actually, I believe, the late Thirties and into the Forties -- was "An Ounce of Prevention is Worth a Pound of Cure." The word "mild" and "milder" was used often in their advertising at that time. The Kool campaign used -- well, both the doctor

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

penguin, but also menthol to cure colds. That was in the 1940s.

Luckies, I've already mentioned that started in the Twenties, which was "Reach for a Lucky instead of a Sweet," continued into the 1930s. I think that ran for about a decade. I may be wrong on the exact dates.

Those are -- I mean, those are pretty much -- without having -- without looking at any of these, those are pretty much the themes that I can recall.

Q Feel free to look through them.

A I mean, there was surveys of physicians, surveys of dentists. There was a whole -- when the filters were introduced, there was a whole comparison of different filters. The word "safe" was used to compare one filter with all of the others out there in the world.

Q Which filter ad was that?

A I don't recall off the top of my head. Well, there was a number of them, actually. The one that used the word "safe" or "safer," I believe they used, was the word

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Library http://www.industrydocuments.ucsf.edu/docs/fsjl0001

that was used, was Chesterfield. But there were a number of filters that claimed to filter certain irritants, harmful irritants out of tobacco smoke. There was charcoal filters, that was Kent. Micronite filters, that was in the 1950s, and actually into the 1960s as well. The Micronite filter didn't go away, but I think that was launched in the 1950s.

Q Let me ask you about the Camel campaign, if you're finished with your answer.

A For now.

Q For now.

A I'll have more at trial.

Q The Camel -- no, we want to find out about it now, Mr. Solberg. So, if there's anything else you want to tell us about --

A I'm trying to do this without looking at any advertising.

Q They're right in front of you. Look at them.

MR. HOAG: There's another group here that we gave to you that's not in that pile. Do you want him to look at all of them that we provided?

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

MR. McCONNELL: I'm not sure which pile you're talking about.

MR. HOAG: These were provided to you also. (Handing.)

THE WITNESS: There was a whole campaign. There was an entire --

MR. HOAG: Wait. Let's let him look at the other stuff.

MR. McCONNELL: Go ahead, that's fine. I know which ones you're talking about.

MR. HOAG: That would be these, too, then.

A There were a number of cigarette brands that touted various levels of nicotine and/or less levels of nicotine in their product. I mean, that was -- Lucky Strike used those kinds of claims. Camel certainly did. Both in -- first in the cigarette -- or in the medical journals and later in lay press. There were so many claims by RJ Reynolds talking about Camels aiding your digestion, calming your nerves. I don't remember the exact wording that was used. Camel also had one series of ads that claimed they would

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Browse this new web site at www.industrydocuments.ucsf.edu/docs/fsjl0001

give you a lift, referring to your psychological lift.

Low tar ads began appearing in the 1950s, before actually -- well, technically tar was discussed in 1940s, but the predominance of discussions of low and lower tar was really in the 1950s, before they were ever required to talk about levels or milligrams of tar in the product.

(There was a discussion off the record.)

A There was a number of -- in the 1940s there was a big push by Camel to promote various health themes in military publications, including military medical journals. There was one called Military Surgeon. There was another one called -- it was another medical journal for the Navy. I don't recall the name of it off the top of my head. But, I mean, those would really qualify as medical journals, which I've already mentioned.

The word "satisfying" was used by just about everybody. That pretty much covers -- I mean, that's a fairly large vocabulary of words that have been used.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Browse this item online at www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Let me back up and focus on the Camel campaign for a moment. One of the campaigns was "More doctors smoke Camels," correct?
A Right.
Q Was that a true or false statement?
A I don't remember if that was covered in one of these FTC reports or not. I think that -- I'm pretty sure that they did a survey, and I don't know if they conducted that at the AMA conventions when they were there with their booths or not. I think they may have done it there actually and done the surveying there. But I would say it was probably a true statement, yeah.
Q "Camels aid digestion," true or false statement?
A I don't know how they would aid digestion.
Q It's not possible?
A Well, I can tell you that one of the effects of nicotine on the body is to serve as a stimulator for gastric motility, but that doesn't mean that it's going to help your digestion if you're walking around with runs in your pants. So, I -- you know, I don't know where that -- how that claim could

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Support provided by www.industrydocuments.ucsf.edu/docs/fsjl0001

necessarily be made for everybody.
Q "Camel stops" --
A If you were constipated, it may help your digestion somewhat.
Q "Camel stops your nerves from jangling," true or false statement? "Keeps your nerves from jangling."
A Again, I don't -- I don't know how they could make the claim.
Q Doesn't nicotine calm the nerves of at least some smokers, makes them feel calm?
A It's a stimulant, so it can't make you feel calmer.
Q You've never seen research that, though it's a stimulant, it does actually make some people feel calmer?
MR. HOAG: Object to the form of the question, it's argumentative.
Q (By Mr. McConnell) That's the question. Have you ever seen such research?
MR. HOAG: Object to the form of the question.
A Research regarding what? I'm sorry.
Q (By Mr. McConnell) Showing that nicotine, though it is a stimulant, as you say,

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

actually makes many smokers feel calmer?
A I think some people probably have reported that they felt calmer, but you're asking me whether or not it calms the nerves. That's a -- that's a big leap between whether or not someone feels calmer because they have the nicotine that they're craving. Put it this way: If they never smoked, if they never smoked before and they lit up a cigarette, they would not feel calm. They would feel very dizzy, they would feel very sick. So, again, put in the context of, you know, what this case is talking about, I don't know. I don't think they can make the claim.
Q With respect to all these ad campaigns that you've just described, have you ever seen or done a reception analysis on any of those campaigns?
A No.
Q Do you know what a reception analysis is?
A Yes, I think I know what it is.
Q It's a way of analyzing how consumers receiver or react?
A Correct. I have never conducted one, no.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Q And you're unaware of any, is that right?
A I have not -- no, I've never read any evidence to that nature.
Q Have you seen any evidence indicating one way or the other whether or not these ad campaigns that you just described increased sales or did not increase sales?
A I think that you have to -- again, I'll put that back in the context in which we're talking about here. Now, we're looking at a much larger time frame, so I don't know if you want to narrow that down for your question or not, because the sales were certainly increasing up until about 1952.
Q Can you tell to what extent the increase in sales was attributable to the ad campaigns?
A Well, again, if you look at some of the research reports that were released and that were publicized, that were made -- you know, widespread public attention, you could certainly look -- I think 1939, with Ochsner and DeBakey was probably one of the -- it wasn't one of the first, but certainly it got quite a bit of attention, and Ochsner continued to receive attention after that.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Support provided by the UCSF Library www.industrydocuments.ucsf.edu/docs/fsjl0001

So, I think what you have is you have -- you have some of the response to the early links between smoking and cancer resulted in these kinds of campaigns being necessary in order to at least maintain -- to alleviate the fears of the consumer.

Q Do you know if, in fact, these ad campaigns did alleviate the fears of the consumer?

A I don't see how they could not, if on the one hand you have -- you're someone -- you're a consumer of this product, and you hear that something terrible is going to happen to you, you know, in some report that gets some publicity, but yet every single day you're hearing that somehow the product has been improved, and even by physicians and other health care professionals, and we've even surveyed them and they've tried it themselves, they've tried it on their patients -- you know, that's -- that's pretty obvious, I think, that those kinds of campaigns are what maintained people -- one of them that maintained people smoking.

Q What evidence have you seen that the effect of these ad campaigns was, in fact, to

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

reduce the fear of cigarette consumers?
A You know, as a historian, I'll put it back in the context of the time in which these various campaigns were created. And you're looking at certain campaigns that literally were launched, for the lack of a better word, specific rebuttals to scientific reports. I mean, that has -- put it this way: If the Federal Trade Commission had not ordered tobacco companies, cigarette companies to stop using the overt health claims in cigarette advertising, they would probably still be doing it today.
Q Back to my question: What evidence have you seen that, in fact, consumers' fears were, in fact, reduced as a result of these cigarette ads?
MR. HOAG: I object to the question, asked and answered.
A The evidence I've seen is -- I mean, it's the advertising and the time that it appeared and the context of the advertising, and the way that the advertising was used and promoted.
Q (By Mr. McConnell) Have you seen any survey

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/fsjl0001

evidence of consumers where they indicate that their fears were reduced as a result of these health claim ads?

A If you have some, I'd love to see those from the industry.

Q I'm asking whether you've seen them.

A I haven't seen any surveys that show the results of these advertisements, but I've already said that.

Q Do you think the cigarette companies perform such surveys?

MR. HOAG: Asked and answered --

A Yes, I do.

MR. HOAG: -- four, five hours ago.

Q (By Mr. McConnell) And did they --

A I think that it's the job of advertising agencies to prove to cigarette companies that their campaigns will be successful and are successful. So, will be before they're launched, there's got to be research before they're launched and there's got to be research to continue that campaign. If you, for lack of a better word, screw up, you're fired, and ad agencies are fired every

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

single day. And look at how many times the industry in different companies have changed ad agencies.

Q And if the cigarette companies had such documents, you would love to see them, wouldn't you?

A I would appreciate seeing them, yes.

Q It would be important for your historical research, wouldn't it?

A I think it would be important for everybody to understand completely what exactly the industry was doing.

Q And it's conceivable, isn't it, depending on what these documents would say, that it could even change your mind in terms of the significance of these ads, is that right?

A That it could change my mind about the significance of these ads?

Q Right?

A I think I've already said the ads speak for themselves. The health claims in these cigarette advertisements speak for themselves. I don't think -- I think that when any lay person, any juror takes a look at these ads, they're going to say, "Oh, my

http://legacy.library.ucsf.edu/tid/nur07a00/pdf
Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

God, I can't believe that that's the way that cigarettes were promoted."

Q Let's put aside present-mindedness. The issue is --

A That's not present-mindedness, because they're going to be given these, and they're going to be told what the context was. That's what my testimony will be as a historian, to try to put these in the context in which they appeared. I tried to do that right now. I said I can do that with some of these, but not with all of these.

Q I'm asking you as a historian, what evidence do you have as to the effect of these ads -- not what the ads say, not what the themes are, but the effect of these ads on the people who actually saw the ads, the consumers?

A Cigarettes sales for the major brands that used the most health claims increased beginning when these claims started until the time that major reports in 1950, '52 and '54 were released and the FTC simultaneously ruled that they could no longer use such

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Browse this page at www.industrydocuments.ucsf.edu/docs/fsjl0001

claims in their advertising.
Q You'll admit, won't you, that in the Thirties and 1940s, there were whole periods of variables. The ads weren't the only variables affecting cigarette sales, correct?
A Certainly that wasn't the only variable.
Q There were a lot of things going on in society, correct?
A A lot of things going on with individuals at the time.
Q So, my question is: How do you attribute the increase in sales during the Thirties or the Forties to the ads? What's your evidence?
MR. HOAG: I'm going to object. This has been asked and answered about 16 times during this deposition. You started to ask these questions hours ago. He answered them then. He's answering now the same way he did before when he answered them before when you asked these questions, by the way.
A What was the question?

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

Q (By Mr. McConnell) The question is what's your evidence of the effect of these ads that you've just been talking about on consumers?

MR. HOAG: Same objection.

A I just finished stating that the sales increased for the major brands that used these health claims.

Q (By Mr. McConnell) Do you have any other evidence besides that?

MR. HOAG: Objection. It's been asked and answered, and he's given you other evidence, and he's repeated it over and over again.

A The most important thing is the bottom line. If sales are increasing, what other evidence do you need?

Q (By Mr. McConnell) I'm not asking what evidence you need. I'm asking what other evidence do you have?

MR. HOAG: Objection, asked and answered.

A That's the evidence I have, and that's what I've given you.

Q (By Mr. McConnell) Now, there's another

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Document from www.industrydocuments.ucsf.edu/docs/fsjl0001

pile of ads that the Plaintiffs have designated. I want to make sure you're looking through the same pile. Mr. Hoag has these are listed for us. That's what he's got.

A Am I looking at these or those?

MR. HOAG: These are all listed.

Q (By Mr. McConnell) That's the ones that Mr. Hoag has.

A All right.

Q I want you to take a look at those, and the same question I already asked for this other pile, which is: In looking at these ads, can you tell me the year in which they came out and how they appeared, if at all, in the state of Florida?

MR. HOAG: Okay. These ads are from the pile, and while you were asking questions, I separated these out so that in the front are those that make it easier to identify, within the context of the ad itself, where it came from and the date. So, the first several we'll be able to answer that, and the others he'll probably give you

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

the answer he can from the documents.
MR. McCONNELL: We all appreciate the seminar.
A On some of these I can.
Q (By Mr. McConnell) All right. Go ahead and why don't you read out the exhibit number while you do it.
A 1015 is the exhibit number, Saturday Evening Post, August 31st, 1946, "The Doctor Makes His Rounds," Camels, "More doctors smoke Camels than any other cigarette, according to a nationwide survey." I've already talked about that campaign in detail.
Q Next?
A This is also for Camels, which states, "Camels agree with me." This is Plaintiff's Exhibit 1022, Saturday Evening Post, March 26, 1938. What am I supposed to be telling you here?
Q I'm just assuming -- you tell me if I'm right -- that if it appears in the Saturday Evening Post, your conclusion is going to be that it appeared in the state of Florida?
A That's correct. It would have appeared, it's a national publication.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Browse this item online at www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Let's move on to the next one.
A Ladies Home Journal would have appeared in the state of Florida, too. That's where this is from. This is probably from the 1940s. I don't know if it says here. 1949. "Smoke a Lucky to feel your level best," with a woman tennis player.
Q What exhibit number is that, please?
A 1046.
Q Okay. Next one?
A This is Sports Illustrated from April 25th, 1960. This is my scuba diver for Marlboro. "If you think flavor went out when filters came in, try Marlboro, the filter cigarette with unfiltered taste. Make yourself comfortable, have a Marlboro." And, yes, that would have appeared in the state of Florida, as would -- this is an ad for a Winston, "Winston tastes good, like a cigarette should," which appeared in the 1950s -- it could have been the late Forties, but I believe it was the 1950s. In fact, I think it was early to mid-Fifties, but I don't see a date on this. This is from Life, Lee Harvey Oswald on the cover.

http://legacy.library.ucsf.edu/tid/xur07a00/pdf Support https://www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Well, doesn't that make you think it's probably the 1960s?
A That would be it. That would be 1960s. 1964 it is.
Q Next one?
A This is Kent with a Micronite filter, Life magazine, 1960s, February.
Q All right. Next one?
Q Saturday Evening Post, 1954. This is for Camels, costlier tobaccos, the question: "How are your nerves? Cowboys need healthy nerves and, believe me, so do housewives."
Q What exhibit number is that, please?
A 744.
Q Okay. Next one?
A Saturday Evening Post, July 21, 1956, "Luckies taste better, cleaner, fresher, smoother." That's No. 745.
Q Next one?
A 1956, Saturday Evening Post, No. 746, for Tareyton filter tips, "The taste is great, filter tip Tareyton." I sound like I'm on TV.
Q You're pretty darn good at it. Next one?
A Saturday Evening Post, 1956. This is Camel,

http://legacy.library.ucsf.edu/tid/nur07a00/pdf
Browse this document online at www.industrydocuments.ucsf.edu/docs/fsjl0001

"Not a single case of throat irritation due to Camels," No. 747. By the way, I should say that with respect to the "More Doctors Smoke Camels" campaign, they had a simultaneous campaign that actually came a few years later that they continued much longer called "More people smoke Camels," and they used celebrities like Van Monroe, who's pictured here, who was a radio and recording star who died from throat cancer.

Q By the way this pile of ads that we're going through at this point, is this a pile of ads that you've collected?

A What do you mean that I've collected?

Q Have you collected these ads in this pile?

A I have all of these ads in the archives, if that's what you're asking me.

Q Is this a selection that you've made, this pile, or somebody else made this selection?

A I don't know, to be honest. I mean, I have photocopied probably a thousand advertisements for Stanley Rosenblatt.

Q Okay.

A But I know that he's gotten ads from some other people, as well.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Browse this at www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Next one. Marlboro?
A Yeah. Saturday Evening Post, 1950, "Gee, Mommy, you sure enjoy your Marlboros." This is when Marlboro was still a women's cigarette.
Q When was its market share at that point?
A For Marlboro?
Q Yes.
A It was very low, actually. I don't remember exactly what it was.
Q Next one?
A This is for Winston. This is U.S. News and World Report, 1957, Plaintiff's Exhibit No. 751, "Winston tastes good like a cigarette should," Winston filter cigarettes.
Q Next one?
A Pure, snow white filter. This is Sports Illustrated, 1967. This is Winston Menthol, King-Size, popular price. "When smokers changed to Philip Morris, every case of irritation due to smoking cleared completely or definitely improved." And at the asterisk it says "as reported by a group of doctors in leading medical journals." This is from Colliers National Weekly, says 1937,

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

No. 1767.
Q With respect to that ad in Colliers, can you be sure that that also appeared in Florida?
A I have copies -- I would assume that that did, yeah. It's a national weekly that was distributed. I mean, we have copies of that.
Q Is that an ad from the back cover or from inside? Is there a way you can tell?
A (Referring to document.) I can't tell on this particular ad.
Q It's true, isn't it, that for ads that occur not on the covers, either inside flap or outside, but for ads that are in the inside part of the magazine, that there can be different ads in different parts of the country?
A Depending on the publication, yes.
Q Do you know --
A TV Guide would be an example that has regional publications.
Q How about Colliers, do you know?
A I'm pretty sure that was national.
Q You're pretty sure?
A I'm quite sure that that was national.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Support provided by www.industrydocuments.ucsf.edu/docs/fsjl0001

Q That information is based on what? How do you know that?
A We have copies of this in the office, in the archives.
Q Right. And how does that tell you that the same ads appeared everywhere in the country?
A I tell you what I will do, I will make sure and look to make sure that we have, from various addresses, the same ads in there.
Q Okay. Next one?
A 1936 Camel ad in Country Gentleman. I couldn't tell you if that was a local or regional or national publication.
Q What exhibit number is that?
A 1865, for Camel.
Q Okay. Next one?
A This is 1947, "Always buy Chesterfield." I don't see a publication on it.
MR. HOAG: I don't think the rest of them make it clear on their face what the publication was, for the rest of that group.
Q (By Mr. McConnell) And if you want to just sort of cut through this, if you want to flip through and verify that, that's fine,

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Support provided by the UCSF Library
http://www.industrydocuments.ucsf.edu/docs/fsjl0001

that, looking through the rest, you can't tell where they were published?

A Right. I'm trusting Mr. --

Q Well, it's your testimony, Mr. Solberg.

MR. HOAG: If there's anything about the ad that you want to talk about as you look at it --

A I just want to make a statement about whether or not a certain publication -- the question should -- I'm not criticizing your questioning. The question should be --

Q (By Mr. McConnell) You'd be the only one in the room. Go ahead.

A -- would be whether or not the advertisement actually appeared in Florida, and to say that this advertisement was created for a regional publication and only was distributed to that would be very, very rare. In my experience, in my historical analysis and the collection that we have of advertising, that would be very rare, and I'll give you another example. A good example of that is Playbill, which is different in just about every single city. The covers are certainly, and some of the

http://legacy.library.ucsf.edu/tid/xur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

middle content. Some of the advertisements, believe it or not, are done all over the country, maybe on different dates. But I just wanted to make that very clear, that they have appeared -- even though it's a local publication for whatever event is showing at the theater, those ads appeared all over the country in Playbill.

Q Let me follow up on that for a moment. Based on your familiarity with cigarette advertising, isn't it true that some brands of cigarettes are far stronger in certain parts of the country than other parts?

A I don't know what you mean by far stronger. I mean, of the major brands, no.

Q What about Parliament?

A Parliament's a good example I was just going to mention -- yes. For Parliament, yes. But Parliament is not even in the top ten in terms of market share.

Q What about Newport?

A I would say that Newport might have some regional differences in terms of market share, but in terms of its advertising, that's national.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Browse this item online at www.industrydocuments.ucsf.edu/docs/fsjl0001

Q Well, have you ever heard the advertising phrase "Spending against strength"?
A What?
Q "Spending against strength"?
A The phrase?
Q Are you familiar with that phrase, "Spending against strength"?
A I haven't heard that particular phrase, no.
Q Why don't you continue.
MR. HOAG: Just for the record, these other documents that don't have specific identifying information about what publication they came from, Eric may have information about the particular ad that would identify whether or not it's been published in any publications and he may be aware of that by looking at the ad that we have here. So, to the extent that he does, he'll certainly be asked those questions about --
MR. McCONNELL: That coaching is extremely helpful.
MR. HOAG: No, I'm just telling you that, just because he doesn't have

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

it on here, that doesn't mean he won't be asked questions later on, when it shows he can identify the ad.

Q (By Mr. McConnell) Why don't you continue with your testimony, Mr. Solberg?

THE WITNESS: What time is it? Sorry, I don't have a watch on.

MR. McCONNELL: About 5:30.

A This is a number of examples that I've already mentioned in terms of themes, everything from sports celebrities to health claims in cigarette advertisements, and most of these do not have identifiers in terms of date and publication.

Q Well, if there are any that do, I want to know about it. If there are any in there that do provide identification in terms of year and where published, published in the state of Florida, I want to know about it.

MR. HOAG: You're talking about just on the face of the document itself, rather than something he knows separate and apart from just looking at the document?

Q (By Mr. McConnell) If you can tell by

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

looking at it, if you look at this ad and you can tell me for sure you know the year and that it was published in the state of Florida, tell me.

A Whether or not I know it was published in the state of Florida?

Q Right.

A I know that that ad was published in the state of Florida. These are not pre-1970.

Q Yeah, don't worry about those.

A These ads were definitely not. These are ads for Camel that were published in the 1990s, and I can tell you for sure that I have several publications in the state of Florida.

MR. HOAG: Which ads are you referring to? You have to identify whatever you say.

THE WITNESS: Do you want the exhibits numbers?

MR. HOAG: Yeah.

THE WITNESS: 9324, 15651, 15652, and 15780. Those are all Camel ads.

Q (By Mr. McConnell) You can skip those, the advertorials. I'm not going to ask you

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

about those.
A I can tell you that this was published in Life magazine in 1952, "Play it safe, smoke Chesterfield."
Q Exhibit number?
A 1874.
Q Okay.
A I can tell you that even Bing Crosby, because he's so recognizable, was published in Life magazine in 1944 advertising Chesterfield.

I can tell you -- there is no date on this. I can tell you that this appeared in Life magazine, though. This is Old Gold, Exhibit No. 1868. "For a treat instead of a treatment, smoke Old Gold."

I have all of these ads, I just can't tell you the exact publication, and I don't want to make a mistake unless I know for sure.
Q Just for the record, you're looking at some ads and putting them aside, you're not commenting, and that reflects that you don't know, as you sit here today, the year and whether they were published in Florida; is

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/fsjl0001

that right?
A That's correct. John Wayne, yes, I remember this one, and this was -- I'm trying to remember the date. I don't recall the date. It was in Life magazine, however. It was sometime in the late Forties, early Fifties. "More people smoke Camels than any other cigarette."
Q You can skip the advertorials.
A I'm skipping a number of these that I've already talked about. I mean, "More doctors smoke Camels," we've already discussed where they appeared and the time period in which that campaign ran, so some of these I am skipping because there's no sense in duplicating what I've said.
MR. HOAG: Well, to the extent that there are specific exhibits and later on counsel's going to argue you couldn't identify them, you need to identify them anyway.
A Okay. And this is an ad that appeared in Life magazine, late Forties or early Fifties. Actually, it's probably late 1940s. It's Exhibit No. 1037 for Camel,

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Browse https://www.industrydocuments.ucsf.edu/docs/fsjl0001

"More doctors smoke Camel than any other cigarette."

This appeared in Life magazine in 1933, Lucky Strike cigarettes. This is Exhibit No. 1035. "Okay, Miss America, we thank you for your patronage."

This is a series of actually ads "Do you inhale," a campaign that ran in the 1930s in Time magazine.

MR. HOAG: What exhibit number is that?

A Sorry, 1032 for Lucky Strike. This is from Life magazine, 1953, for Chesterfield, Exhibit No. 1030.

Life magazine, 1952, for Chesterfield, No. 1029.

An ad for Camels, this is from -- I don't remember what year, I want to say this is from the middle 1950s, Camel cigarettes, Exhibit No. 1028, Life magazine. God, this is a famous ad, too. I should know this one. I cannot remember.

MR. HOAG: What's the number?

A Lucky Strike cigarette ad, No. 1026. I know it's Life magazine, I just don't remember

http://legacy.library.ucsf.edu/tid/xur07a00/pdf Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/fsjl0001

what year that's from.

We've already looked at that. This is Life magazine, 1952, Chesterfield cigarettes, Exhibit 1021.

This is one of a series that appeared in Time magazine in the 1930s, early 1930s, Exhibit 1020, for Lucky Strike.

I've already discussed "More doctors smoke Camels than any other cigarette." This is actually from Life magazine, Exhibit No. 1018.

This is a 1940 -- 1939 Camel advertisement. This is a series of cartoon ads that appeared in both Time and Life magazine in the late Thirties and early Forties. This is Exhibit 1017.

This is another example of "More doctors smoke Camels than any other cigarette," Exhibit No. 1016.

This was in the 1930s, actually early 1940s, in Time magazine for Luckies, Exhibit No. 1013.

This is Life magazine, 1953, for Chesterfield, Exhibit No. 1014.

This is a series that appeared in the

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Browse this item online at www.industrydocuments.ucsf.edu/docs/fsjl0001

late 1940s, mid to late 1940s and into the early 1950s, for Winston cigarettes, "Winston tastes good like a cigarette should," and this appeared in Time, Life, Sports Illustrated.

MR. HOAG: What exhibit number is it?

THE WITNESS: 5484.

Q (By Mr. McConnell) When did Winston become the No. 1 selling brand?

A I don't recall the exact year.

MR. McCONNELL: I'm through.

EXAMINATION BY MR. HRANITZKY:

Q Can you just look really quick to see if you can find that JAMA article?

A Yes.

(There was discussion off the record.)

MR. HOAG: Do you have copies of the originals that he provided you with a copy of and you made copies? Do you have copies of those?

MR. McCONNELL: You just made one copy.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

MR. HOAG: So, you have been provided copies of those originals and you don't want to ask him any questions about them, right?

MR. McCONNELL: Right. I'm not going to take any more of his time.

(There was discussion off the record.)

MR. HOAG: I want to put on the record the dates of the original documents that were provided copies of today that defense counsel doesn't want to take any more time to ask any questions about. That would be an ad appearing in the September 7th, 1931 Time magazine, an ad appearing in the November 10th, 1930 Time magazine, an ad appearing in May 10th, 1937 Time, an ad in June 27th, 1932 Time magazine, an ad in the August 26, 1929 Time magazine, an ad in the September 5th, 1932 Time magazine, an advertisement in -- I'm not sure -- in the November, 1941 edition of a publication called Oral Hygiene.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries www.industrydocuments.ucsf.edu/docs/fsjl0001

Do you know what magazine this came from? I can't identify it easily.

THE WITNESS: It's Life.

MR. HOAG: This is Life?

THE WITNESS: Yeah.

MR. HOAG: What date?

THE WITNESS: 1947.

MR. HOAG: The rest of these in this pile, can you identify where they came from and the dates, this pile of originals?

THE WITNESS: Yeah. What is this from?

MR. HOAG: I don't know.

THE WITNESS: Give me just a second here. Why don't you do the easy ones? This is 1935, Life magazine.

MR. HOAG: March, 1930 magazine called Travel; August 23rd, 1930 Colliers National Weekly magazine, an advertisement in there;.

THE WITNESS: This is Time magazine, 1930. Let's do this systematically. I'll do this first, and then we'll do that.

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Support provided by the Industry Documents Library: www.industrydocuments.ucsf.edu/docs/fsjl0001

MR. HOAG: Okay.

(There was a discussion off the record.)

MR. HOAG: An ad from Time magazine dated January 16th, 1950; an ad in Life magazine dated March 17th, 1947; an ad in Life magazine dated October 20th, 1952; an ad in Life magazine dated December 23rd, 1946; an ad in Life magazine dated March 23rd, 1953; an ad in Life magazine dated May 19th, 1952.

THE WITNESS: I may have left it on the floor in my office, because I'm missing a couple of other AMA, JAMA articles.

MR. HOAG: An ad in Medical Women's Journal, May of 1942; an ad in the Medical Women's Journal dated July of 1942; an ad in the Texas State Journal of Medicine dated September, 1944; an ad in the Texas State Journal of Medicine dated July, 1944; an ad in Time magazine dated September 21st, 1936.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

MR. HRANTIZKY: I'd just like to make a statement on the record. Since the witness has identified this article from a 1965 edition of JAMA as being the basis of his opinions regarding the amount of funding that went to respective institutions supported by the AMA-ERF program and he has not identified any other evidence that actually sets forth those amounts of funding, then we would reserve the right to continue this deposition prior to his testimony at trial, unless the Plaintiffs want to withdraw any testimony regarding the amounts of funding awarded to those respective institutions.

MR. HOAG: I think he provided other documents that show it.

MR. HRANITZKY: No, he did not provide any other documents.

MR. HOAG: Whatever. I'll say what I believe, I may be wrong, I may be right. The record will reflect it. He also, I know, referred to "Tobacco

http://legacy.library.ucsf.edu/tid/nur07a00/pdf
Support provided by the UCSF Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/fsjl0001

and Health," which was a defense exhibit, as having information related to that, and also an exhibit that was marked by Plaintiffs' counsel, which is, I believe -- I mean defense counsel, which defense marked as Exhibit 1, the memo dated December 2nd, 1965.

MR. HRANITZKY: The witness' testimony is in the transcript. He said that none of these documents provide the information on the actual amounts disbursed to the respective institutions, so we have no evidence to provide the basis of that opinion. Therefore, as I said, we reserve the right to continue this deposition when we can examine him on that evidence, unless Plaintiffs want to withdraw that particular portion of his testimony.

MR. HOAG: We're not going to withdraw it, we're going to object to continuing the depo, which that's up to the judge to decide, and the JAMA article is publicly available to anyone

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Digitized by www.industrydocuments.ucsf.edu/docs/fsjl0001

who wants to look at it.

MR. HOAG: Well, it hasn't been identified with any particularity for us. We don't know which particular article it is.

MR. HOAG: Okay. Do you have any comments about the JAMA article -- I'm talking to the witness now -- before we go off the record?

THE WITNESS: I think I had testified earlier that the JAMA article was cited in the Defense Exhibit 1 as a table that identified not the institutions, but rather the areas of research that were categorized: Nicotine, cardiovascular, respiratory and so forth. That was the reference to the JAMA article that I made.

Q (By Mr. Hranitzky: So, the JAMA article doesn't identify the amount of funds disbursed to individual institutions?

A Only that information which was provided in Defense Exhibit 1 today, provided that kind of information.

Q The amount disbursed to individual

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Browse this new web at www.industrydocuments.ucsf.edu/docs/fsjl0001

institutions?
A Yes. And some, there are -- I did allude earlier to other meetings of the AMA-ERF that included some information on amounts that were given to certain institutions.
Q Can you identify any specific document that sets forth those amounts?
A Not without having to go through these documents again.
MR. HRANITZKY: Okay. Well, I'd repeat my statement on the record, and we'll see what the Judge does on Tuesday.

* * * * * * * * * *

http://legacy.library.ucsf.edu/tid/xur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

THE STATE OF _____:

COUNTY OF _____:

I, ERIC SOLBERG, hereby certify that I have read the foregoing transcript of my testimony given in the foregoing numbered and styled case.

I further certify that it is a true and correct record of my testimony given at this deposition, together with any and all corrections, if any, that have been made on a separate page and attached thereto.

SIGNED on this, the _____ day of _____, 1999.

_____

ERIC SOLBERG

SUBSCRIBED AND SWORN TO BEFORE ME this, the _____ day of _____, 1999.

_____

Notary Public in and for

the State of _____

My Commission expires: _____

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/fsjl0001

THE STATE OF TEXAS:

I, KAREN ROMEO ROTHMAN, the undersigned Certified Shorthand Reporter of the State of Texas, do hereby certify that the above and foregoing caption to this deposition correctly states the facts set forth herein; that the examination of the witness named in said caption was correctly reported in shorthand by me at the time and place and under the agreement set forth in said caption and has been transcribed from shorthand into typewriting under my supervision in the foregoing transcript; and that said transcript contains a correct record of the proceedings had at said time and place.

I further certify that I am neither attorney nor counsel for, related to, nor an employee of any of the parties to the action in which this testimony was taken. Further, I am not a relative or employee of any attorney of record in this cause, nor do I have a financial interest in the action.

Subscribed and sworn to on this, the

_____ day of _____, 1999.

_____

KAREN ROMEO ROTHMAN, CSR

Certificate No. 1510

Expiration: December 31, 2001

http://legacy.library.ucsf.edu/tid/mur07a00/pdf Byrd Document www.industrydocuments.ucsf.edu/docs/fsjl0001

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

HOWARD A. ENGLE, M.D., ET AL,
Plaintiffs,
VS.) CASE NO. 94-08273 CA 20
RJ REYNOLDS TOBACCO COMPANY, ET AL
Defendants.

CERTIFICATE TO THE DEPOSITION OF
ERIC SOLBERG
VOLUME III

I, KAREN ROMEO ROTHMAN, Certified Shorthand Reporter in and for the State of Texas, hereby certify, pursuant to the Rules and/or agreement of the parties present, to the following:

That this deposition transcript is a true record of the testimony given by ERIC SOLBERG on January 7, 1999, after said witness was duly sworn by me.

That $_____ is the charge for the preparation of the completed deposition transcript and any copies of exhibits, charged to Counsel for Defendant Philip Morris Tobacco Company, Mr. Stephen J. McConnell, State Bar No. _____.

That the deposition transcript was submitted on _____ to _____, for examination, signature and return to O'Neal-Probst-Wells by _____. The attached Change/Correction Sheet contains any changes, and reasons therefor, made by the witness.

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Document from www.industrydocuments.ucsf.edu/docs/fsjl0001

That the deposition transcript was____was not___ signed and returned to the deposition officer by the witness.

That the original deposition transcript, or a copy thereof, together with copies of all exhibits, was delivered or mailed in a postpaid, properly addressed wrapper, certified with return receipt requested, to the attorney or party who asked the first question appearing in the transcript, _____, on _____ for safekeeping and use at trial.

That pursuant to information made a part of the record at the time said testimony was taken, the following includes all parties of record:

FOR THE PLAINTIFF:

Stanley M. Rosenblatt, P.A.
12th Floor - Concord Building
66 West Flagler Street
Miami, FL 33130
By: Mr. John Hoag

FOR THE DEFENDANT PHILIP MORRIS INCORPORATED:

Dechert Price & Rhoads
4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, PA 19103
By: Mr. Stephen J. McConnell

FOR THE DEFENDANT COUNCIL FOR TOBACCO RESEARCH - U.S.A., INC.:

DebeJoise & Plimpton
875 Third Avenue Peachtree Street
New York, New York 10011
By: Mr. Dennis Hranitzky

http://legacy.library.ucsf.edu/tid/mur07a00/pdf
Stanford Libraries http://www.industrydocuments.ucsf.edu/docs/fsjl0001

That a copy of this certificate was served on all parties shown herein.

Subscribed and sworn to on this, the _____ day of _____, 1999.

_____

KAREN ROMEO ROTHMAN, CSR

Certificate No. 1510

Expiration: December 31, 2001

http://legacy.library.ucsf.edu/tid/nur07a00/pdf Browse this new web at www.industrydocuments.ucsf.edu/docs/fsjl0001